

20[X] No. [XX]

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Cambourne to Cambridge Order 202[X]

Made - - - - - ****

Coming into force ****

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The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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

(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, S.I. 2019/311 and S.I. 2023/795.

(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.

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:—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Cambourne to Cambridge 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 1984 Act” means the Road Traffic Regulation Act 1984(d);
- “the 1990 Act” means the Town and Country Planning Act 1990(e);
- “the 1991 Act” means the New Roads and Street Works Act 1991(f);
- “the 1992 Act” means the Transport and Works Act 1992(g);
- “the 2003 Act” means the Communications Act 2003(h);
- “the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016(i);
- “the 2017 Act” means the Neighbourhood Planning Act 2017(j);
- “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;
- “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;
- “the Crown land plans” means the Crown Land Plans included in the deposited plans.
- “cycle track” means a way constituting a highway, being a way over which the public have the following, but no other, rights of way—

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- (a) 1961 c. 33.
 - (b) 1965 c. 56.
 - (c) 1980 c. 66.
 - (d) 1984 c. 27.
 - (e) 1990 c. 8.
 - (f) 1991 c. 22.
 - (g) 1992 c. 42.
 - (h) 2003 c. 21.
 - (i) S.I. 2016/1154.
 - (j) 2017 c. 20.

(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;

“deposited plans” means the plans and drawings 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 plans, the special category land plan, the Crown land plans and the works and land plans;

“electronic transmission” means a communication transmitted—

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

(d) 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 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 use 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;

“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;

“longitudinal sections” means the Longitudinal Sections included in the deposited plans;

“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;

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

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

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

“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 the Acquisition of Land Act 1981(a);

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

“the rights of way plans” means the Rights of Way 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 deemed planning proposed site sections and the longitudinal sections included in the deposited plans;

“the special category land plan” means the Special Category Land Plan 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(b);

“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 Plans included in the deposited plans.

(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 comprises guided busway premises.

(3) References in this Order to numbered plots are references to plot numbers on the works and land 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 provisions of Chapter 1 of Part 2 of the 2017 Act do not apply as regards the temporary possession or use of land under article 28 (temporary use of land for construction of

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

(b) 1984 c.27.

works), article 29 (temporary use of land for maintenance of works) and article 30 (temporary use of land for access) of this Order or to anything else done under this Order.

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

- (a) regulation 12 (requirement for an environmental permit) of the 2016 Regulations^(a) in relation to the carrying on of a flood risk activity or a water discharge 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; 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”^(c) and “water discharge activity”^(d) 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^(e) (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 transport 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 execution of street works) and any regulations made, or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 12 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

^(a) S.I. 2016/1154.

^(b) 1991 c. 59.

^(c) This term is defined in paragraph 3 of Part 1 of Schedule 25 to the 2016 Regulations.

^(d) This term is defined in paragraph 3 of Schedule 21 to the 2016 Regulations.

^(e) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

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

- (a) section 54^(b) (advance notice of certain works), subject to paragraph (6);
- (b) section 55^(c) (notice of starting date of works), subject to paragraph (6);
- (c) section 57^(d) (notice of emergency works);
- (d) section 59^(e) (general duty of street authority to co-ordinate works);
- (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 its operation and use the undertaker has the same powers in respect of 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.

-
- (a) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (b) As amended by section 49(1) of the Traffic Management Act 2004.
 - (c) As also amended by sections 49(2) and 51(9) of the Traffic Management Act 2004.
 - (d) As also amended by section 52(3) of the Traffic Management Act 2004.
 - (e) As amended by section 42 of the Traffic Management Act 2004.

(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 7 (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 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, aprons, 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 to install or alter the position of any street furniture or apparatus, including mains, sewers, drains, attenuation tanks, pipes, cables and lights;
- (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 alter the course of, or otherwise interfere with, watercourses;
- (j) landscaping, attenuation and infiltration ponds, bunds, noise barriers, ecological and other works to mitigate any adverse effects of the construction, maintenance or operation of the other authorised works;
- (k) works for the provision of exchange open space land
- (l) hoardings and fencing, footways, footpaths and bridleways; and
- (m) facilities and works for the benefit or protection of land or premises affected by the other 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 scheduled works.

(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;
- (b) on land specified in columns (1) and (2) of Schedule 7 (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 9 (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 Order limits along which the guided busway system will operate, 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; 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 access 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 the new and improved 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) and streets to be stopped up for which a substitute is to be provided described in Part 2 of that Schedule deviate laterally from the routes shown on the rights of way 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 alter the layout of, improve, and carry out other ancillary works in, any street specified in column (1) of Schedule 3 (streets subject to alteration of layout) or in column (2) of Part 1 or column (4) 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) in the manner specified in relation to that street in column (2) of Schedule 3 and column (2) of Part 1 and column (4) 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) 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 any 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) 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.

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.

Power to execute street works

9.—(1) The undertaker may, for the purpose of exercising the powers conferred by article 8 (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;

(a) S.I. 1999/1026.

- (d) place and keep apparatus in or under the street;
- (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 2 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.

Rights of way over emergency and maintenance access tracks, etc.

10.—(1) Any public rights 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) shall be subject to any conflicting use:

- (a) of the emergency and maintenance access tracks 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) 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 local 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 of Schedule 4 (streets and means of access to be stopped up and the provision of new and improved streets and substitutes) and column (4) of Part 2 of that Schedule by reference to the letters and numbers shown on the rights of way plans referred to in column (2) of Part 1 and column (4) of Part 2 of that Schedule.

(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 (2) 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 plans referred to in column (3) of Part 2 and in column (2) of Part 3 of that Schedule.

(3) No street specified in column (2) of Part 2 of Schedule 4 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 (4) of Part 2 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 (2) of Part 3 of Schedule 4 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 column (1) of Part 4 of Schedule 4 to the extent specified in column (2) of that Part 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 column (2) of Part 5 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) 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, as if it were a dispute under Part 1 of the 1961 Act.

(6) 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.

Access and access to works

13.—(1) In addition to the powers contained in paragraph (6) of article 11 (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 column (3) of Part 4 of Schedule 4 (streets and means of access to be stopped up and the provision of new and improved streets and substitutes) and column (2) of Part 6 of Schedule 4;
- (b) close existing means of access in the location specified in columns (1) and (2) of Part 4 of Schedule 4 and column (2) of Part 5 of that Schedule; and
- (c) 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 (c) 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 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 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.

Guided busway 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 41 (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 guided busway crossing; 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 to this Order for the purposes of forming a guided busway crossing.

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

(6) In this article—

“barrier” includes gate;

“guided busway 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 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, 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.

(8) If a person who receives an application for consent or approval fails to notify the undertaker of their 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) In this article—

(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).

- (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 (13); 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); and
- (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 trial hole(s);
- (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
- (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.

(a) 1991 c. 57.

(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) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (11)(a) in the case of a highway authority; or
 - (b) under paragraph (11)(b) in the case of a street authority,
- that authority is deemed to have granted consent.

(13) 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 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) 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

Compulsory acquisition of 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 works) (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) The undertaker may only acquire compulsorily the land comprising plot 14-150 as shown on the works and land plans with the consent of National Highways Limited and at a height that is 5.4 metres above the surface of the M11 special road, but the undertaker may—

- (a) acquire new rights over plot 14-150; and
- (b) exercise the powers contained in article 28 (temporary use of land for construction of works)

below that height for the purposes of installing, maintaining, repairing, removing and replacing a bridge within plot 14-150.

(3) Nothing in paragraph (1) authorises the undertaker to acquire compulsorily any of the plots mentioned in Schedule 6 (land not to be acquired compulsorily), or any rights over that land, but the undertaker may acquire by agreement any part of those plots, or any rights over that land, and use those plots for the purposes of the construction, operation and maintenance of the guided busway system.

(4) 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), article 35 (time limit for exercise of powers of acquisition) and article 62 (Crown rights).

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 order), the applicable period for the purposes of 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 Cambourne to Cambridge Order 202[*]”.

(5) In section 11(c) (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(d) (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 Cambourne to Cambridge Order 202[*]”.

(8) In Schedule 2A(e) (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 Cambourne to Cambridge 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 Cambourne to Cambridge Order 202[*].”

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

25.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(f) applies as if this Order were a compulsory purchase order.

(a) 1981 c. 67.

(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).

(c) Subsection 11(1B) was inserted by S186(2)(b) of the Housing and Planning Act 2016 (c. 22).

(d) Section 11A was inserted by S186(3) of the Housing and Planning Act 2016 (c. 22).

(e) Schedule 2A was inserted by paragraph 3 of Schedule 17 to the Housing and Planning Act 2016 (c. 22).

(f) 1981 c. 66.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, 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)(a).

(5) In section 5B (extension of time limit during challenge)(b) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 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 Cambourne to Cambridge Order 202[*]”.

(6) In section 6 (notices after execution of declaration)(c), 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)(d), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) In Schedule A1(e) (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 Cambourne to Cambridge 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 (compulsory acquisition of 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 (compulsory acquisition of 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, other rights or covenants already in existence.

(2) In the case of the land specified in column (2) of Schedule 7 (land in which only new rights, etc. may be acquired) the undertaker’s powers of compulsory acquisition 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 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) where the undertaker acquires a right over land or the benefit of a restrictive or other covenant under paragraph (1) or paragraph (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 8 (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

(a) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(b) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(c) 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).

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

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

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 covenant 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
- (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 (3) 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, 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 column (2) of Schedule 9 (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 (or any of them) 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 Compulsory Purchase (Vesting Declarations) Act 1981;
 - (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;
 - (d) construct any permanent works specified in relation to that land in column (3) of Schedule 9; 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 9; 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 Compulsory Purchase (Vesting Declarations) Act 1981 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 60 (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.

(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. 2009/1307.

(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).

(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 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 (compulsory acquisition of land) or article 26 (power to acquire new rights and imposition of restrictive covenants).

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 60 (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 (application of Part 1 of the 1965 Act).

(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).

(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 9 (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, must 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 carrying out of the works or the making of the improvement or alteration as part of the authorised works was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised 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) 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, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 11 (provisions relating to statutory undertakers, etc.) 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 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 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) The following do not apply in connection with the exercise of 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 Compulsory Purchase (Vesting Declarations) Act 1981; 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 Compulsory Purchase (Vesting Declarations) Act 1981, as applied to this Order by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(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), but 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.

Open Space Land

36.—(1) The undertaker must not under the powers of this Order take possession of any part of the open space land until the undertaker has taken possession of the exchange land.

(2) Upon the undertaker taking possession of so much of the open space land as is required for the authorised works that land will be discharged from all rights, trusts and incidents to which it was previously subject.

(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) The undertaker must not under the powers of this Order take possession of any part of the DfT open space land until the undertaker has taken possession of the DfT exchange land.

(4) Upon the undertaker taking possession of so much of the DfT open space land as is required for the authorised works that land will be discharged from all rights, trusts and incidents to which it was previously subject.

(5) The undertaker must lay out, as open space, the exchange land and DfT exchange land of which possession has been taken under paragraph (1) before the end of the period of one year beginning with the date the authorised works are first brought into public use.

(6) On the date on which the local planning authority has certified that the exchange land has been laid out and provided to its reasonable satisfaction as open space, the exchange land is to vest (or be offered for vesting) in the open space land owner and is to be subject to the same rights, trusts and incidents as attached to the open space land.

(7) On the date on which the local planning authority has certified that the DfT exchange land has been laid out and provided to its reasonable satisfaction as open space, the DfT exchange land is to vest (or be offered for vesting) in the DfT open space land owner and is to be subject to the same rights, trusts and incidents as attached to the DfT open space land.

(8) In this article—

“DfT exchange land” means plot 14-144c shown on the works and land plans;

“DfT open space land” means plot 14-154 shown on the works and land plans;

“DfT open space land owner” means the Secretary of State for Transport or its successors in title from time to time;

“exchange land” means plot 14-144b shown on the works and land plans;

“the open space land” means the plot shown on the works and land plans as plot number 14-153; and

“the open space land owner” means F.W. Deptford (Over) Limited (Company number 00512735) of Wilbraham Temple, Great Wilbraham, Cambridge, CB1 5JF or its successors in title from time to time.

PART 9

OPERATION OF THE GUIDED BUSWAY SYSTEM

Power to operate and use guided busway system

37.—(1) The undertaker may operate and use the guided busway system and any apparatus or facilities used for the operation of the 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 “busway system”).

(2) Subject to paragraph (3) and article 49 (powers of disposal, agreements for operation, etc.), the undertaker has, 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.

(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 of the provisions of this Order except to the extent that the exercise of the right is constrained by the presence of the authorised works.

Power to charge fares

38.—(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.

39.—(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

40.—(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.

(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(c).

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

(a) 1985 c. 67.

(b) See Railways and Other Guided Transport Systems (Safety) Regulations 2006/599.

(c) 1994 c. 22.

- (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

41.—(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)(a) 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 44 (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.

Restrictions on waiting

42.—(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 10 (Traffic Regulation) as are described in column (2) of that Part and identified on the rights of way 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—

(a) 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).

- (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the road; or
- (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) by a universal service provider for the purposes of providing a universal postal service as defined in the Postal Services (Universal Postal Service) Order 2012(a); 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");
 - (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 police officer in uniform 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.

(a) S.I. 2012/936, amended by S.I. 2013/3108 and S.I. 2015/643.

(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 person’s badge, means—

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

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

so that the front of the badge 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 fascia of the vehicle; or

(ii) where the vehicle does not have a dashboard or fascia, 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.

Vehicle Movements

43.—(1) Except as provided in paragraph (4) and (5), 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 10 and identified on the rights of way 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 (4) and (5), on and after such a day as the undertaker may determine, on reaching the point identified in column (1) of Part 3 (prescribed turns) of Schedule 10 and identified on the rights of way plans, no person is to cause or permit any vehicle to proceed from the length of road described in column (2) of that Part into the road described in column (3) of that Part otherwise than by turning in the direction specified in column (4) of that Part, except upon the direction of, or with the permission of, a police officer in uniform.

(3) Except as provided in paragraphs (4) and (5), on and after such a day as the undertaker may determine, on reaching the point identified in column (1) of Part 4 (no left turn) of Schedule 10 and identified on the rights of way plans, no person is to cause or permit any vehicle to proceed from the length of road described in column (2) of that Part into the road described in column (3) of that Part, except upon the direction of, or with the permission of, a police officer in uniform.

(4) Nothing in paragraphs (1) to (3) 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—

(a) in connection with:

(i) the removal of any obstruction to traffic; or

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

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

- (b) for police, ambulance, fire and rescue authority or traffic officer purposes.

(5) Nothing in paragraphs (1) to (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 (6) in relation to that vehicle which is displayed in the front or nearside of the vehicle.

(6) 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 (3) on any of the roads described in those paragraphs.

(7) Paragraphs (1) to (6) 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

44.—(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 42 (restrictions on waiting) and 43 (Prescribed 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.

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

^(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.

- (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.

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).

(a) 1996 c. 16.

(b) 2003 c. 20.

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,

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) 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—

- (a) “functions” means statutory and other powers, duties, rights, interests and obligations; and
- (b) 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 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 have 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, 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) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the 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.

(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.

Statutory undertakers, etc.

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

Protection of interests

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

Disapplication of agreements restricting use of land

55.—(1) The National Trust covenants and the Coton Orchard National Trust covenants shall not be extinguished by or as a result of the operation of any provision of this Order.

(2) Subject to the provisions of this article, the National Trust covenants and the Coton Orchard National Trust covenants over the part of the burdened land and the part of the Coton Orchard burdened land that (in either case) is subject to compulsory acquisition under this Order are, to the extent that those covenants prevent, hinder or in any way interfere with the construction of the authorised works or the use or occupation of the land for the purposes of this Order, suspended and will remain unenforceable from—

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

whichever is the earlier.

(3) Subject to the provisions of this article, the National Trust covenants over any burdened land of which the undertaker takes temporary possession under article 28 (temporary use of land for construction of works) of this Order are, to the extent that those covenants prevent, hinder or in any way interfere with the construction of the authorised works or the use or occupation of the land for the purposes of this Order, suspended and remain unenforceable for as long as the undertaker remains in lawful possession of the burdened land in accordance with that article.

(4) The National Trust covenants over the burdened land and the Coton Orchard National Trust covenants over the Coton Orchard burdened land are to remain suspended and unenforceable pursuant to this article for as long as that land is used or occupied for the purposes of this Order, including any period during which that land is to be restored to its previous condition or to the reasonable satisfaction of the owners of the land in accordance with article 28.

(5) Subject to the provisions of this article, the National Trust covenants over the burdened replacement land subject to compulsory acquisition under this Order are suspended on—

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

whichever is the earlier.

(6) The National Trust covenants over the burdened replacement land are to remain suspended and unenforceable pursuant to this article for as long as the burdened replacement land is subject to the same rights, trusts and incidents as attached to the open space land in accordance with article 36(6) (open space land).

(7) Any person who suffers loss by the suspension of the National Trust covenants or the Coton Orchard National Trust covenants over the burdened land or the burdened replacement land under this article is entitled to compensation, to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) In this article—

“the burdened land” means plot nos. 10-114, 11-121, 12-125, 12-126, 12-127, 13-128, 13-129, 13-137, 14-144a, 14-145, 14-146, 14-147, 14-148, 14-150, 14-152, 14-153 and 14-154 described in the book of reference and shown on the works and land plans;

“the burdened replacement land” means plot nos. 14-144b and 14-144c described in the book of reference and shown on the works and land plans;

“the Coton Orchard burdened land” means plot no. 13-142 described in the book of reference and shown on the works and land plans;

“the Coton Orchard National Trust covenants” means the restrictions and stipulations contained in the schedules to the Deeds of Covenant dated 30 April 1958 made between The Cambridge Preservation Society and the National Trust for Places of Historic Interest or Natural Beauty relating to land situate in the Parish of Coton in the County of Cambridge; and

“the National Trust covenants” means the restrictions and stipulations contained in the schedules to the Deeds of Covenant dated 16 December 1958 made between The Cambridge Preservation Society and the National Trust for Places of Historic Interest or Natural Beauty relating to land situate in the Parish of Coton in the County of Cambridge.

Minerals

56. Nothing in this Order affects the right of any person entitled to any mine or minerals of any description whatsoever under a street along which the guided busway system is laid to work the mine or get the minerals; but this does not affect any liability (whether civil or criminal) of the person so entitled in respect of damage to the guided busway system resulting from the exercise of any such right.

Removal of human remains

57.—(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 (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question 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) 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.

(12) 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.

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

(14) 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.

(15) 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.

58. 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.

(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.

Service of notices

59.—(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 (references to service by post) of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

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

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be, “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

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

60. 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.

(a) 1978 c. 30.

Arbitration

61. 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.

Crown Rights

62.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
 - (i) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
 - (iii) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.
- (b) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any land in which there subsists a Crown interest if that other interest is for the time being held otherwise than by or on behalf of the Crown.

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

Signed by authority of the Secretary of State for Transport

Name

Head of the Transport and Works Act Orders Unit

Date

Department for Transport

SCHEDULES

SCHEDULE 1

Articles 2(1), 5 and 6

SCHEDULED WORKS

In the County of Cambridgeshire, District of South Cambridgeshire, and City of Cambridge

In the District of South Cambridgeshire—

Work No.1 – A two-way busway (414 metres in length), together with an adjoining access track, commencing at Sterling Way, Cambourne, running east through Cambourne, before terminating at the crossing of Broadway, Cambourne. The work includes the improvement of the highway of Broadway.

Work No.2 – A two-way guided busway (2,007 metres in length), together with an adjoining emergency and maintenance access track, commencing at a junction with Work No.1 and the highway of Broadway, Cambourne, before running through the Bourn Airfield in a northern then easterly direction and terminating at a junction with Work No.3 and St Neots Road, Childerley. The work includes a new access from Bourn Airfield to the highway of Broadway and the improvement of the highway of Broadway.

Work No.3 – A two-way guided busway (1,333 metres in length), together with an adjoining emergency and maintenance access track, commencing at a junction with Work No.2 and St Neots Road, Childerley and continuing in an easterly direction between the A428 and St Neots Road, before terminating at St Neots Road, Dry Drayton, approximately 90 metres west of the St Neots Road and Scotland Road junction. The work includes widening and improvement of St Neots Road to provide a new signalised junction to permit guided buses to turn right from St Neots Road westbound in to the guided busway and a new bridleway connection to the southern section of St Neots Road.

Work No.4 – Realignment and improvement of St Neots Road in Hardwick and Comberton to provide access to Work No.6. The realigned section is approximately 253 metres in length, commencing 510 metres west of its junction with Long Road, Comberton, terminating at Work No.6 and includes a new combined cycle track and footway.

Work No.5 - Realignment of St Neots Road in Hardwick and Madingley to provide access to Work No.6. The realigned section is approximately 430 metres in length, commencing at the junction with Work No.4 and 6 to the West of Long Road, Comberton, terminating approximately 264 metres west of the St Neots Road and Madingley Road junction. The work includes widening of the highways of St Neots Road and Long Road at their junction in Comberton including a new combined cycle track and footway.

Work No.6 – A two-way guided busway (359 metres in length), together with an adjoining emergency and maintenance access track, commencing at a junction with Work No.4 and Work No.5 running in a south easterly direction before terminating at a junction with work No. 7 and Long Road, Comberton, and including the widening and improvement of the highway of Long Road, Comberton.

Work No.7 – A two-way guided busway (2,293 metres in length), together with an adjoining emergency and maintenance access track, commencing at a junction with Work No.6 and Long Road Comberton and running in an easterly direction before terminating at a junction with Work No. 8 and Cambridge Road, Coton and including the widening and improvement of the highway of Cambridge Road, Coton.

Work No.8 – A two-way guided busway (635 metres in length), together with an adjoining emergency and maintenance access track, and the widening and improvement of the highway of Cambridge Road, Coton, commencing at a junction with Work No.7 and Cambridge Road Coton, and running in an easterly direction before terminating at a junction with Work No. 9 at the administrative boundary between South Cambridgeshire and Cambridge City Council, to the west of the M11.

In the City of Cambridge—

Work No.9 – A two-way guided busway (430 metres in length), together with an adjoining emergency and maintenance access track, commencing at the administrative boundary between South Cambridgeshire and Cambridge City Council at a junction with work No. 8 and running east across the M11 motorway before terminating at Ada Lovelace Road, West Cambridge Campus. This work includes a new bridge carrying the guided busway over the M11 motorway, and the diversion of public bridleway 39/30.

Work No.10 – A two-way guided busway (1,601 metres in length), commencing at a junction with Charles Babbage Road, in the West Cambridge Campus, and running in a southerly direction through the West Cambridge Campus, then continuing south-east through agricultural land and across Bin Brook, before terminating at Grange Road, Cambridge. An emergency and

maintenance access track is provided from Footpath 39/31, south of the West Cambridge Campus, to Grange Road. This work includes a new bridge carrying the guided busway over Bin Brook, west of Grange Road, means of access to adjoining premises and works to improve the highway of Grange Road, Cambridge.

SCHEDULE 2

Articles 2(1), 5 and 23

ACQUISITION OF CERTAIN LANDS FOR ANCILLARY WORKS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of plot shown on the works and land plans</i>	<i>(3)</i> <i>Purpose for which land may be acquired</i>
In the District of South Cambridgeshire		
Parish of Bourn, Bourn Airfield	1-021, sheet 1	Drainage and basin/retention pond, landscaping and environmental mitigation
Parish of Bourn, Bourn Airfield	3-032b, sheet 3	Replacement access road from Bourn Quarter to the roundabout at the junction of St Neots Road and Highfield Road, Childerley, and known as Wellington Way
Parishes of Caldecote and Childerley, St Neots Road	4-041b, sheet 4	Landscaping, works to St Neots Road and environmental mitigation
Parish of Caldecote, St Neots Road	4-044, sheet 4	Landscaping and works to St Neots Road
Parish of Dry Drayton, St Neots Road, Hardwick	5-054, 5-055, 5-056, sheet 5	Drainage and basin/retention pond, landscaping and environmental mitigation
Parish of Dry Drayton, St Neots Road, Hardwick	5-062b, sheet 5	Basin/retention pond
Parish of Dry Drayton, St Neots Road, Hardwick	5-063, sheet 5	New bridleway connection
Parish of Dry Drayton, Scotland Farm	6-072, sheets 6 and 7 6-073, sheets 6 and 7 6-074, 6-079, 6-080 sheet 6	Park and ride site, travel hub and interchange including basin/retention pond, landscaping and environmental mitigation, walking and cycling facilities on Scotland Road and works to public footpath 66/17
Parish of Comberton, St Neots Road	9-085b, sheet 9	Landscaping and environmental mitigation
Parish of Comberton, St Neots Road	9-089b, sheet 9	Landscaping and environmental mitigation
Parish of Comberton, St Neots Road	9-089c, sheet 9	Landscaping and environmental mitigation
Parish of Comberton, St Neots Road	9-093b, sheet 9	Landscaping and environmental mitigation
Parish of Comberton, St Neots Road	9-090, sheet 9	Drainage basin/retention pond, landscaping and environmental mitigation
Parish of Comberton, Long Road	9-097, sheets 9 and 10	Drainage and basin/retention pond, landscaping and

Parishes of Comberton and Madingley	10-118, sheets 10 and 11	environmental mitigation Drainage and basin/retention pond, landscaping and environmental mitigation
Parish of Coton	12-127, sheets 12 and 13	Landscaping and environmental mitigation
Parish of Coton	13-128, sheet 13	Landscaping and environmental mitigation
In the City of Cambridge		
Rectory Farm, west of M11 motorway	14-144a, sheet 14	Drainage and basin/retention pond, landscaping, bridleway, access to neighbouring land and environmental mitigation
City of Cambridge, west of M11 motorway	14-144b, 14-144c, sheet 14	Replacement open space
Rectory Farm, west of M11 motorway	14-146, sheet 14	Landscaping and environmental mitigation
South of West Cambridge Campus	15-161b, sheets 15 and 16	Diversion of public footpath
South of West Cambridge Campus	16-164b, sheet 16	Landscaping and environmental mitigation
South of West Cambridge Campus	16-165, sheet 16	Diversion of public footpath
South of West Cambridge Campus	16-170, sheet 16	Diversion of public footpath
South of West Cambridge Campus	16-172, sheet 16	Diversion of public footpath
South of West Cambridge Campus	16-173b, sheet 16	Diversion of public footpath
South of West Cambridge Campus	16-176, sheet 16	Drainage and basin/retention pond, landscaping and environmental mitigation
West of Grange Road, Cambridge	16-179, sheets 16 and 17	Flood compensation, landscaping and environmental mitigation

SCHEDULE 3

Article 7

STREETS SUBJECT TO ALTERATION OF LAYOUT

<i>(1)</i> <i>Street subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration</i>
In the District of South Cambridgeshire	
Broadway, Cambourne	Widening and improvement and provision of new signalised junction between the points marked HA01.01 and HA01.02 on the rights of way plans
St Neots Road, Dry Drayton	Widening and improvement including new signalised junction between the points marked HA05.01 and HA05.02 on the rights of way plans
St Neots Road, Dry Drayton, Hardwick and Comberton	Improvement including provision of a new combined cycle and footway between the

Footpath 66/17	points marked HA05.03 and HA09.05 on the rights of way plans Widening and improvement of the footpath between the points marked PA06.01 and PA06.02 on the rights of way plans
Scotland Road, Dry Drayton	Widening and improvement of the highway associated with the construction of a new access to park and ride facility and travel hub, widening of Scotland Road, between the points marked HA07.01, HA.07.02 and HA07.03 on the rights of way plans
Long Road, Comberton	Widening and improvement of carriageway and provision of sightlines between the points marked HA10.02 and HA10.03 on the rights of way plans
Long Road, Comberton	Widening of carriageway and provision of sightlines between the points marked HA10.04 and HA10.05 on the rights of way plans
Cambridge Road, Coton	Provision of new shared cycle tracks comprised in the highway, improvement of carriageway and provision of sightlines between the points marked HA13.01 and HA13.02 on the rights of way plans
In the City of Cambridge Grange Road, Cambridge	Widening and improvement of carriageway, alteration to footways and provision of sightlines between the points marked HA17.01 and HA17.02 on the rights of way plans

SCHEDULE 4

Articles 6, 7, 10, 11 and 13

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>New and improved street</i>
In the District of South Cambridgeshire	
Cambourne and Bourn	A new and improved length of Broadway to provide a new access to Bourn Airfield, including widening of carriageway, alterations to footways and provision of new signalised junction between the points marked HA01.01 and HA01.02 on the rights of way plans
Childerley to Dry Drayton	New bridleway along the route of the emergency and maintenance access track comprised in Work No 3 between St Neots Road, Childerley, and St Neots Road, Dry Drayton between the points marked NB04.02 and NB05.01 on the rights of way plans

Dry Drayton	A new and improved length of St Neots Road, Dry Drayton including widening of carriageway and a new signalised junction, between the points marked HA05.01 and HA05.02 on the rights of way plans
Dry Drayton	New bridleway between the northern and southern alignments of St Neots Road, Dry Drayton, between the points marked NB05.02 and NB05.03 on the rights of way plans
Dry Drayton	Widening and improvement of Footpath 66/17 between, the points marked PA06.01 and PA06.02 on the rights of way plans
Dry Drayton	A new and improved length of Scotland Road to provide a new access to park and ride facility and travel hub, between the points marked HA07.01, HA.07.02 and HA07.03 on the rights of way plans
Comberton	New bridleway along the route of the emergency and maintenance access track comprised in Work No 6 between St Neots Road and Long Road Comberton, between the points marked NB09.01 and NB10.01 on the rights of way plans
Comberton	A new and improved length of Long Road, including widening of carriageway and provision of sightlines, between the points marked HA10.03 and HA10.04 on the rights of way plans
Comberton to Coton	New bridleway along the route of the emergency and maintenance access track comprised in Work No 7 between Long Road Comberton and Cambridge Road, Coton, between the points marked NB10.02 and NB13.01 on the rights of way plans
Coton	A new and improved length of Cambridge Road, including new cycle tracks comprised in the highway, improvement of carriageway and provision of sightlines between the points marked HA13.01 and HA13.02 on the rights of way plans
In the District of South Cambridgeshire and City of Cambridge	
Coton to West Cambridge Campus	New bridleway along the route of the emergency and maintenance access track comprised in Work No 9 between Cambridge Road, Coton and diverted bridleway 39/30 , West Cambridge Campus shown between the points NB13.02 and NB14.01 on the rights of way plans
In the City of Cambridge	
Coton	New bridleway connecting to the emergency and maintenance access track comprised in Work No 9, between the points marked NB14.02 and NB14.03 on the rights of way plans
Cambridge	A new and improved length of Grange Road including the alteration to footways,

improvement of carriageway and provision of sightlines between the points marked HA17.01 and HA17.02 on the rights of way plans

PART 2

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street affected</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
District of South Cambridgeshire, Madingley and Comberton	St Neots Road	Between the points marked HS09.01 and HS09.02 to points HS09.03 to HS09.04 on the rights of way plans	A new and improved length of St Neots Road between the points marked HA09.01 and HA09.02 to the points marked HA09.03, HA09.04, HA10.01 and HA10.02 on the rights of way plans
District of South Cambridgeshire	Public footpath 55/2, Coton	Between the points marked PS12.01 and PS12.02 on the rights of way plans	New footpath within the limits of deviation shown shaded purple between the points marked PD12.01 and PD12.02 on the rights of way plans
City of Cambridge	Bridleway 39/30	Between the points marked PS14.01 and PS14.02 on the rights of ways plans	New bridleway within the limits of deviation shown shaded purple between the points marked PD14.01 and PD14.02 and the points marked PD14.03 and PD14.04 on the rights of way plans
City of Cambridge	Footpath 39/31	Between the points marked PS16.01 and PS16.02 on the rights of way plans	New footpath within the limits of deviation shown shaded purple between the points marked PD16.01, PD16.02, PD16.03 and PD16.04 on the rights of way plans

PART 3

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

<i>(1)</i>	<i>(2)</i>
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<i>Street to be stopped up</i>	<i>Extent of stopping up</i>
In the District of South Cambridgeshire	
Part of the former A428 west of the junction of Wellington Way and St Neots Road, Caldecote	Between the points marked HS04.01, HS04.02, HS04.03 and HS04.04 on the rights of way plans
Permissive footpath PPA/0066, Long Road	Between the points marked PS10.01 and PS10.02 on the rights of way plans

PART 4

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

<i>(1)</i> <i>Means of access affected</i>	<i>(2)</i> <i>Extent of closure</i>	<i>(3)</i> <i>New means of access to be substituted</i>
In the District of South Cambridgeshire		
Wellington Way, St Neots Road, Childerley	Between the points marked AS03.01 and AS03.02 to AS04.01 and AS04.02 and shown shaded red on the rights of way plans	Between the points marked AN03.01 and AN03.02 to AN04.01 and AN04.02 and shown shaded black on the rights of way plans
Private means of access on to St Neots Road, Comberton	At point AS09.01 and shown shaded red on the rights of way plans	At point AN09.01, on the altered section of St Neots Road on the rights of way plans

PART 5

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

<i>(1)</i> <i>Means of access affected</i>	<i>(2)</i> <i>Extent of closure</i>
In the City of Cambridge	
West of Grange Road	Means of access from the point marked AS17.01 to the point marked AS16.01 and shown shaded red on the rights of way plans

PART 6

NEW MEANS OF ACCESS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>New means of access</i>
In the District of South Cambridgeshire	
Parish of Dry Drayton	New private means of access onto St Neots Road at the point marked AN05.01 on the rights of way plans
Parish of Dry Drayton	New private means of access onto St Neots Road at the point marked AN05.02 on the rights of way plans

Parish of Comberton	New private means of access onto Long Road at the point marked AN10.01 on the rights of way plans
Parish of Comberton	New private means of access onto Long Road at the point marked AN10.02 on the rights of way plans
Parish of Coton	New private means of access onto Cambridge Road at the point marked AN13.01 on the rights of way plans
Parish of Coton	New private means of access onto Cambridge Road at the point marked AN13.02 on the rights of way plans
In the City of Cambridge West of Grange Road	New private means of access along the authorised guided busway at the point marked AN17.02 on the rights of way plans to and from Grange Road and leading to the points marked AN16.01, AN17.01 and AN17.04
West of Grange Road	New private means of access on the authorised guided busway at the point marked AN17.03 on the rights of way plans

SCHEDULE 5

Article 16

HIGHWAYS TO BE CROSSED ON THE LEVEL

In the District of South Cambridgeshire

Broadway, Cambourne
St Neots Road, Childerley
Long Road, Comberton
South Cambridgeshire footpath 55/2, Coton
Cambridge Road, Coton

In the City of Cambridge

Bridleway 30/39, Cambridge, West Cambridge Campus
Footpath 39/3, Cambridge, West Cambridge Campus

SCHEDULE 6

Article 23

LAND NOT TO BE ACQUIRED COMPULSORILY

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of plot shown on works and land plans</i>
In the District of South Cambridgeshire	
Between Sterling Way and Broadway, Cambourne	1-001, 1-002, 1-003
In the City of Cambridge	
Between the M11 motorway and Ada Lovelace Road	14-155a

SCHEDULE 7

Articles 5 and 26

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

(1) Area	(2) Number of plot shown on the works and land plans	(3) Purpose for which rights may be acquired
In the District of South Cambridgeshire Parish of Bourn, Bourn Airfield		
	1-020, sheet 1	<p>To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, drain, repair, cleanse, retain, renew, replace and remove drainage pipes, apparatus and infrastructure.</p> <p>Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain and repair pipes, apparatus and infrastructure.</p> <p>To include restrictive covenants for protecting installed pipes apparatus and infrastructure from excavation, damage or injury; to not materially reduce the depth of soil above any installed pipe, apparatus and infrastructure; and to prevent access to installed pipes, apparatus and infrastructure, being made materially more difficult.</p>
Parish of Bourn, Bourn Airfield	1-025, 1-027, 1-028, sheet 1	<p>To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, drain, repair, cleanse, retain, renew, replace and remove drainage pipes, head wall, apparatus and infrastructure.</p> <p>Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain and repair pipes, apparatus, head wall and infrastructure.</p> <p>To include restrictive covenants for protecting installed pipes apparatus and infrastructure from excavation, damage or injury; to not materially reduce the depth of</p>

Parish of Hardwick, St Neots Road	5-061, sheet 5	<p>soil above any installed pipe, apparatus, head wall and infrastructure; and to prevent access to installed pipes, apparatus, head wall and infrastructure, being made materially more difficult.</p> <p>To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, drain, repair, cleanse, retain, renew, replace and remove drainage pipes, apparatus and infrastructure.</p> <p>Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain and repair pipes, apparatus and infrastructure.</p> <p>To include restrictive covenants for protecting installed pipes apparatus and infrastructure from excavation, damage or injury; to not materially reduce the depth of soil above any installed pipe, apparatus and infrastructure; and to prevent access to installed pipes, apparatus and infrastructure, being made materially more difficult.</p> <p>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.</p> <p>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. To include restrictive covenants for protecting the installed apparatus.</p> <p>To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, drain, repair, cleanse, retain, renew, replace and remove drainage pipes,</p>
Parish of Dry Drayton, Scotland Road	7-076, 7,077, 7-078, sheet 7	<p>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.</p> <p>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. To include restrictive covenants for protecting the installed apparatus.</p> <p>To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, drain, repair, cleanse, retain, renew, replace and remove drainage pipes,</p>
Parish of Dry Drayton, Scotland Road	7-081, sheet 7	<p>To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, drain, repair, cleanse, retain, renew, replace and remove drainage pipes,</p>

Parishes of Hardwick and Comberton, St Neots Road	9-087, 9-088, sheet 9	<p>head wall, apparatus and infrastructure.</p> <p>Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain and repair pipes, head wall, apparatus and infrastructure.</p> <p>To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, drain, repair, cleanse, retain, renew, replace and remove drainage pipes, head wall, apparatus and infrastructure.</p>
Parish of Comberton, Long Road	10-100, sheet 10	<p>Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain and repair pipes, apparatus and infrastructure.</p> <p>To include restrictive covenants for protecting installed pipes apparatus and infrastructure from excavation, damage or injury; to not materially reduce the depth of soil above any installed pipe, head wall, apparatus and infrastructure; and to prevent access to installed pipes, head wall, apparatus and infrastructure, being made materially more difficult.</p> <p>To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, drain, repair, cleanse, retain, renew, replace and remove drainage pipes, apparatus and infrastructure.</p> <p>Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain and repair pipes, apparatus and infrastructure.</p> <p>To include restrictive covenants for protecting installed pipes apparatus and infrastructure from excavation,</p>

Parish of Comberton, Long Road	10-105, sheet 10	<p>damage or injury; to not materially reduce the depth of soil above any installed pipe, apparatus and infrastructure; and to prevent access to installed pipes, apparatus and infrastructure, being made materially more difficult.</p> <p>To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, drain, repair, cleanse, retain, renew, replace and remove drainage pipes, apparatus, head wall and infrastructure.</p>
Parish of Madingley, Long Road	10-119, sheets 10 and 11	<p>Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain and repair pipes, apparatus, head wall and infrastructure.</p> <p>To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, drain, repair, cleanse, retain, renew, replace and remove drainage pipes, apparatus, head wall and infrastructure.</p>
		<p>Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain and repair pipes, apparatus, head wall and infrastructure.</p>
		<p>To include restrictive covenants for protecting installed pipes apparatus and infrastructure from excavation, damage or injury; to not materially reduce the depth of soil above any installed pipe, apparatus, head wall and infrastructure; and to prevent access to installed pipes, apparatus, head wall and infrastructure, being made materially more difficult.</p>
In the City of Cambridge		
Parish of Coton, west of M11 Motorway	14-147, sheet 14	<p>To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, drain, repair,</p>

		<p>cleanse, retain, renew, replace and remove drainage pipes, apparatus, head wall and infrastructure.</p> <p>Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain and repair pipes, apparatus, head wall and infrastructure.</p> <p>To include restrictive covenants for protecting installed pipes apparatus, head wall and infrastructure from excavation, damage or injury; to not materially reduce the depth of soil above any installed pipe, apparatus, head wall and infrastructure; and to prevent access to installed pipes, apparatus and infrastructure, being made materially more difficult.</p>
Ada Lovelace Road, West Cambridge Campus	14-159a, 14-159b, sheet 14	<p>To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, drain, repair, cleanse, retain, renew, replace and remove drainage pipes, apparatus and infrastructure.</p> <p>Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain and repair pipes, apparatus and infrastructure.</p>
Charles Babbage Road, West Cambridge Campus	14-160, sheets 14 and 15	<p>To access, use and to pass and repass with or without vehicles for the purpose of undertaking a public passenger transport service.</p> <p>To halt vehicles at designated stopping points for the purpose of undertaking a public passenger transport service.</p> <p>To permit access to and from the highway of Madingley Road and to the authorised guided busway by public passenger transport service vehicles.</p>

Charles Babbage Road, West Cambridge Campus	15-167, sheets 15 and 16	To permit access to and from the highway of Madingley Road by customers of the public passenger transport service.
Charles Babbage Road, West Cambridge Campus	16-177, sheet 16	To access, use and to pass and repass with or without vehicles for the purpose of maintaining the authorised guided busway.
		To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, drain, repair, cleanse, retain, renew, replace and remove drainage pipes, apparatus, head wall and infrastructure.
		Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain and repair pipes, apparatus, head wall and infrastructure.

SCHEDULE 8

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, with the necessary modifications in respect of compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land.

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

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

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the Cambourne to Cambridge Order 202[*] (“the 202* Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act^(a) (as substituted by paragraph 5(7) of Schedule 8 to the 202* Order) to acquire an interest in the land; and
- (c) the acquiring authority enter on and take possession of that land,

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

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

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(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 24 (application of Part 1 of the 1965 Act) to the acquisition of land under article 23 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 26 (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);
- (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

(a) 1973 c. 26.

as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 24), 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 24(4) 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 in respect of compensation.

(8) For Schedule 2A 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 Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 25 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981) of The Cambourne to Cambridge Order 202[] in respect of the land to which the notice to treat relates.

(2) But see article 34(2) (power to acquire subsoil or airspace only) of The Cambourne to Cambridge 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 undertaker to purchase the owner’s interest in the house, building or factory.

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- (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), sections 186(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
- (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) 1965 c. 56, Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

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 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 its 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 9

Articles 5, 28, 29 and 30

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of plot shown on the works and land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Work</i>
In the District of South Cambridgeshire			
Parishes of Cambourne and Bourn, Broadway	Plot 1-004, sheet 1	Street works and access to works	Work Nos. 1 and 2
Parish of Cambourne, Broadway	Plots 1-005,1-006, 1- 009, sheet 1	Street works and access to works	Work Nos. 1 and 2
Parish of Cambourne, Broadway	Plots 1-013,1-014, 1- 017, sheet 1	Street works and access to works	Work Nos. 1 and 2
Parish of Bourn, Bourn Airfield	Plot 1-019, sheet 1	Construction of attenuation basin and drainage infrastructure, construction compound and access to works	All works
Parish of Bourn, Bourn Airfield	Plot 1-022, sheet 1	Construction of attenuation basin and drainage infrastructure, construction compound and access to works	All works
Parish of Cambourne, Bourn Airfield	Plot 1-023, sheet 1	Construction of attenuation basin and drainage infrastructure and access to works	Construction of drainage infrastructure on adjacent land, Work No. 2
Parish of Bourn, Bourn Airfield	Plot 1-024, sheet 1	Construction of attenuation basin and drainage infrastructure, construction compound, access to works and compound	All works
Parish of Bourn, Bourn Airfield	Plot 1-026, sheet 1	Construction of attenuation basin and drainage and access to works	Construction of drainage infrastructure on adjacent land, Work No. 2
Parish of Cambourne, Bourn Airfield	Plot 1-029, sheet 1	Construction of drainage	Construction of drainage

		infrastructure and access to works	infrastructure on adjacent land, Work No. 2
Parishes of Cambourne and Bourn, Bourn Airfield	Plot 1-030, sheet 1	Construction of drainage infrastructure and access to works	Construction of drainage infrastructure on adjacent land, Work No. 2
Parish of Bourn, Bourn Airfield	Plot 3-032A, sheet 3	Construction compound and access to works	All works
Parish of Bourn, Bourn Airfield	Plot 3-033, sheet 3	Construction compound, working space access to works	Work No. 2
Parishes of Bourn, and Caldecote, Bourn Airfield	Plot 3-034, sheet 3	Working space and access to works	Work No. 2, Construction of replacement Wellington Way
Parish of Childerley, St Neots Road	Plot 3-037, sheet 3	Working space, street works and access to works	Work Nos. 2 and 3
Parish of Caldecote, Bourn Airfield	Plot 4-039, sheet 4	Working space and access to works	Work No. 2, Construction of replacement Wellington Way
Parish of Childerley, St Neots Road	Plots 4-040, 4-041A and 4-042, sheet 4	Working space and access to works	Work Nos. 2 and 3
Parish of Childerley, St Neots Road	Plots 4-045 and 4-046, sheet 4	Working space, street works and access to works	Work Nos. 2 and 3
Parish of Childerley, St Neots Road	Plot 4-049, sheet 4	Construction compound, working space and access to works	All works
Parish of Dry Drayton, St Neots Road	Plot 4-050, sheet 4	Construction compound, working space and access to works	All works
Parish of Dry Drayton, St Neots Road	Plot 4-053, sheets 4, 5, 6 and 7	Working space and access to works	Work No. 3, works to St Neots Road and Scotland Road junction with A428
Parish of Dry Drayton, St Neots Road	Plot 5-057, sheet 5	Construction compound, working space and access to works	All works
Parishes of Dry Drayton, Hardwick and Madingley, St Neots Road	Plot 5-058, sheets 5, 6, 8 and 9	Working space, street works and access to works	Work Nos. 3 and 4
Parish of Dry Drayton, St Neots Road	Plot 5-059, sheet 5	Working space and access to works	Work No. 3, new bridleway connection at St Neots Road
Parish of Dry Drayton, St Neots Road	Plot 5-064 sheet 5	Working space and access to works	Work No. 3, new bridleway connection at St Neots Road

Parish of Dry Drayton, St Neots Road	Plot 5-066 sheet 5	Working space, street works and access to works	Work No. 3
Parish of Dry Drayton, St Neots Road	Plot 5-067, sheets 5 and 6	Working space, street works and access to works	Works to St Neots Road and Scotland Road junction with A428
Parish of Dry Drayton, A428 Junction	Plots 6-068, 6-069 and 6-070, sheet 6	Street works and access to works	Works to St Neots Road and Scotland Road junction with A428
Parish of Dry Drayton, A428 Junction	Plot 6-071, sheet 6	Street works and access to works	Works to St Neots Road and Scotland Road junction with A428
Parish of Dry Drayton, Scotland Road	Plot 7-075, sheet 7	Working space, street works and access to works	Works to Scotland Road and to access to park and ride facility
Parish of Dry Drayton, St Neots Road	Plot 8-082, sheet 8	Street works and access to works	Works to St Neots Road
Parish of Hardwick, St Neots Road	Plot 8-083, sheet 8	Street works and access to works	Works to junction of St Neots Road and Cambridge Road
Parish of Hardwick, St Neots Road	Plot 8-084, sheet 8	Working space, construction compound, street works and access to works	All works
Parishes of Hardwick and Comberton, St Neots Road	Plot 9-086, sheet 9	Working space and access to works	Works Nos. 4, 5 and 6, works for new drainage and attenuation basin
Parish of Comberton, St Neots Road	Plot 9-091, sheet 9	Working space and access to works	Works Nos. 4, 5 and 6, works for new drainage and attenuation basin
Parish of Madingley, St Neots Road	Plot 9-092, sheet 9	Working space and access to works	Works Nos. 4, 5 and 6
Parish of Comberton, St Neots Road	Plot 9-094, sheets 9 and 10	Working space, construction compound and access to works	All works
Parish of Madingley, St Neots Road	Plot 9-095, sheet 9	Working space and access to works	Work No. 5
Parish of Comberton, Long Road	Plot 9-098, sheets 9 and 10	Working space and access to works	Work No. 6, works for new drainage and attenuation basin
Parish of Comberton, Long Road	Plot 10-101, sheet 10	Working space and access to works	Work No. 6, works for new drainage and accommodation works
Parish of Comberton, Long Road	Plot 10-102, sheet 10	Working space and access to works	Work No. 6, accommodation works
Parish of Comberton,	Plot 10-103, sheet 10	Working space and	Work No. 6, works

Long Road		access to works	for new drainage, accommodation works and works to create temporary access to Long Road
Parish of Comberton, Long Road	Plot 10-104, sheet 10	Working space, street works and access to works	Work Nos. 6 and 7, works for new drainage, accommodation works
Parish of Comberton, Long Road	Plot 10-107, sheet 10	Working space, street works and access to works	Work Nos. 6 and 7, accommodation works
Parish of Comberton, Long Road	Plot 10-108, sheet 10	Working space, street works, access to compound and access to works	All works
Parish of Comberton, Long Road	Plot 10-111, sheet 10	Working space and access to works	Work No. 7
Parish of Comberton, Long Road	Plot 10-113, sheet 10	Working space and access to works	Work No. 7
Parish of Comberton, Long Road	Plot 10-116, sheet 10	Working space, construction compound and access to works	All works
Parish of Coton, north of Coton village	Plot 12-123, Sheet 12	Working space, construction compound and access to works	Work No. 7
Parish of Coton, Cambridge Road	Plot 13-129, Sheet 13	Working space, construction compound and access to works	All works
Parish of Coton, Cambridge Road	Plot 13-131, Sheet 13	Working space, street works and access to works	Work Nos. 7 and 8
Parish of Coton, Cambridge Road	Plot 13-137, Sheet 13	Working space, street works and access to works	Work Nos. 7 and 8
Parish of Coton, Cambridge Road	Plot 13-140, Sheet 13	Working space, street works and access to works	Work Nos. 7 and 8
Parish of Coton, Cambridge Road	Plot 13-143, Sheet 13	Working space, street works and access to works	All works
In the City of Cambridge			
West of M11 Motorway, Rectory Farm	Plot 14-148, Sheet 14	Working space, construction access, lay down area and access to works	Work No.9, new drainage and attenuation basin and amenity area
M11 Motorway	Plot 14-149, Sheet 14	Working space and access to works	Work No.9
M11 Motorway	Plot 14-151, Sheet 14	Working space and access to works	Work No.9
Ada Lovelace Road, West Cambridge	Plot 14-156a, Sheet 14	Working space, construction	All works

Campus		compound, temporary diversion of bridleway and access to works	
Ada Lovelace Road, West Cambridge Campus	Plot 14-156b, Sheet 14	Working space, construction compound temporary diversion of bridleway and access to works	All works
High Cross, West Cambridge Campus	Plot 14-158a, Sheet 14	Working space temporary diversion of bridleway and access to works	All works
High Cross, West Cambridge Campus	Plot 14-158b, Sheet 14	Working space temporary diversion of bridleway and access to works	All works
Charles Babbage Road, West Cambridge Campus	Plot 15-161A, Sheets 15 and 16	Working space, construction access, lay down area and access to works	All works
Charles Babbage Road, West Cambridge Campus	Plot 16-162, Sheet 16	Working space, construction compound and access to works	All works
Charles Babbage Road, West Cambridge Campus	Plot 16-166, Sheet 16	Working space, works to divert public footpath, construction access, and access to works	Work No. 10
Charles Babbage Road, West Cambridge Campus	Plot 16-168, Sheet 16	Working space and access to works	Work No. 10
Charles Babbage Road, West Cambridge Campus	Plot 16-169A Sheet 16	Working space, works to divert public footpath, construction access, and access to works	Work No. 10
Charles Babbage Road, West Cambridge Campus	Plots 16-171 and 16-174, Sheet 16	Access to works	Work No. 10
West of Grange Road, Cambridge	Plot 17-180, Sheet 17	Working space, construction compound and access to works	All works
West of Grange Road, Cambridge	Plot 17-181, Sheet 17	Working space, construction compound and access to works	All works
Grange Road, Cambridge	Plot 17-183, Sheet 17	Street works and access to works	All works

SCHEDULE 10

TRAFFIC REGULATION

Articles 42, 43 and 44

PART 1

NO WAITING

No waiting at any time

(1) <i>Road</i>	(2) <i>Extent</i>
In the District of South Cambridgeshire	
St Neots Road, Hardwick (north side)	Between point TR06.01 and point TR08.01
St Neots Road, Hardwick (south side)	Between point TR06.02 and point TR09.04
St Neots Road, Hardwick (north side)	Between point TR08.02 and point TR08.03
St Neots Road, Hardwick (north side)	Between point TR08.04 and point TR09.01
St Neots Road, Hardwick (north side)	Between point TR09.02 and point TR09.03

PART 2

STRAIGHT AHEAD ONLY

(1) <i>Nos. on Deposited plans</i>	(2) <i>Road</i>	(3) <i>Measure</i>
In the District of South Cambridgeshire		
TR01.01	Broadway, Cambourne	Vehicular traffic must proceed straight ahead
TR01.02	Broadway, Cambourne	Vehicular traffic must proceed straight ahead
TR04.01	St Neots Road, Childerley	Vehicular traffic must proceed straight ahead
TR04.02	St Neots Road, Childerley	Vehicular traffic must proceed straight ahead
TR05.01	St Neots Road, Hardwick	Vehicular traffic must proceed straight ahead
TR05.02	St Neots Road, Hardwick	Vehicular traffic must proceed straight ahead
TR10.01	Long Road, Comberton	Vehicular traffic must proceed straight ahead
TR10.02	Long Road, Comberton	Vehicular traffic must proceed straight ahead
TR13.01	Cambridge Road, Coton	Vehicular traffic must proceed straight ahead
TR13.02	Cambridge Road, Coton	Vehicular traffic must proceed straight ahead
In the City of Cambridge		
TR17.01	Grange Road, Cambridge	Vehicular traffic must proceed straight ahead
TR17.02	Grange Road, Cambridge	Vehicular traffic must proceed straight ahead

PART 3

PRESCRIBED TURNS

<i>(1)</i> <i>Nos. on Deposited plans</i>	<i>(2)</i> <i>Location</i>	<i>(3)</i> <i>Road</i>	<i>(4)</i> <i>Measure</i>
In the District of South Cambridgeshire			
TR07.01	Access Road from the proposed park and ride at Scotland Road	Scotland Road, Dry Drayton	Vehicular traffic must turn right
TR09.05	Comberton	St Neots Road, Comberton, eastbound	Vehicular traffic must turn left
TR09.06	Comberton	St Neots Road, Comberton, westbound	Vehicular traffic must turn right

PART 4

NO LEFT TURN

<i>(1)</i> <i>Nos. on Deposited plans</i>	<i>(2)</i> <i>Road from which entry is prohibited</i>	<i>(3)</i> <i>Road to which entry is prohibited</i>
In the District of South Cambridgeshire		
TR09.07	St Neots Road (westbound), Comberton	The new length of busway comprised in Work No. 6

SCHEDULE 11

Articles 9, 11, 33 and 53

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers etc. on land acquired

1.—(1) Subject to the following provisions of this paragraph, sections 271 to 274(a) (power to extinguish rights of statutory undertakers etc.) of the 1990 Act apply in relation to any land which has been acquired under this Order, or which is held by the undertaker and is appropriated or used (or about to be used) by the undertaker for the purposes of this Order or for purposes connected with those provisions; 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)—

- (a) references to the appropriate Minister are references to the Secretary of State;

(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.

- (b) references to the purpose of carrying out any development with a view to which land was acquired or appropriated are references to the purpose of carrying out the authorised works; and
- (c) references to land acquired or appropriated as mentioned in section 271(1) of the 1990 Act are references to land acquired, appropriated or used as mentioned in sub-paragraph (1).

(3) Where any apparatus of public utility undertakers or of an operator of an electronic communications code network 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 the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(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,

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 in respect of which paragraph 7, or Part 3 of the 1991 Act, applies.

(6) In this paragraph—

“electronic communications code” means the code set out in Schedule 3A of the 2003 Act^(a);

“electronic communications code network” means an electronic communications network within the meaning of the Communications Act 2003 to which the electronic communications code applies; and

“public utility undertakers” has the same meaning as in the 1980 Act^(b).

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, means of access, etc.) 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) Where a street is stopped up under article 11 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.

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

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

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

(4) If in the course of the execution of relocation works under sub-paragraph (1)—

- (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 (3) is to be reduced by the amount of that excess.

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

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

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

(7) Sub-paragraphs (3) to (6) do not apply where—

- (a) the authorised works constitute major transport works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act (including that Part as applied by Article 4 (Application of the 1991 Act)); and
- (b) any relocation works carried out under paragraph (2) include replacement apparatus being placed in a street,

but instead—

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

(8) In this 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 (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in paragraph 1(5).

Application of electronic communications code

3.—(1) Part 6 of the electronic communications code does not apply for the purposes of the authorised works to the extent that such works are regulated by Part 11 of the 1990 Act, sections

84 and 85 of the 1991 Act (or regulations made under section 85 of that Act), paragraph 2 or subparagraph (2).

(2) Part 10 of the electronic communications code applies for the purposes of the authorised works, except—

- (a) in so far as such works are regulated by the 1991 Act or any regulation made under that Act; or
- (b) where the Authority exercises a right under subsection (4)(b) of section 272 of the 1990 Act or under an order made under that section to remove apparatus.

(3) The temporary stopping up, alteration or diversion of any highway under article 12 (temporary stopping up of streets) does not affect any of the code rights of an operator of an electronic communications code network in respect of any apparatus which at the time of the stopping up or diversion is in the highway.

(4) In this paragraph—

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

“code rights” means those rights set out in paragraph 3 of the electronic communications code; and

“electronic communications code” and “electronic communications code network” have the same meaning as in paragraph 1(5).

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

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

(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 paragraph 1 of Schedule 8 to the Utilities Act 2000 c. 27, words substituted by Pt5 reg 18 of the Electricity and Gas (Internal Markets) Regulations 2011 S.I. 2704.

- (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 (agreements 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” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 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.

(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.

(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.

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 61 (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 61 (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 61 (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 sub-paragraph 6(2) 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 (1) is submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 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 (2) 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 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;
- (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(1).

(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 61 (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 (2) 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 6(1) 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;

“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

(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.

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 61 (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;

“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);

“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) 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.

(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.—(1) 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 61 (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.

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” means 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);

“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 and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by 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;

“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;

(a) 1986 c.44. as amended by section 5 of the Gas Act 1995 c.45.

“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; and/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 of Cadent), 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 and/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 works and 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 and/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 and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it shall be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works 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 and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule 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 and/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 do so.

(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) and/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) and/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) and/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; and/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 61 (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 61 (arbitration).

Notices

37. Notwithstanding article 59 (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—

“the 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 61 (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 61 (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 61 (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) 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 sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 61 (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 sub-paragraph (1) must be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe 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 development, 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 development 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 61 (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 61 (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 61 (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 the 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 61 (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) where the diameter of the pipe exceeds 400 millimetres up to a maximum of 7.5 metres.

Expenses

62.—(1) Subject to article 60 (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 61 (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 61 (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 61 (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 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, removal and excavation 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;

“emergency” means an occurrence which presents a risk of-

- (a) serious flooding;
- (b) serious detrimental impact on drainage; or
- (c) serious harm to the environment;

“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;

“non-tidal river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016;

“plans” includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements and descriptions; 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. affect the conservation value of any main river and habitats in its immediate vicinity—

(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 79.

(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).

(5) In the case of refusal, the Agency must provide reasons for the grounds of that refusal.

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.—(1) 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 there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (a) below, the Agency may serve written notice requiring the undertaker to cease all or part of the specified works as may be specified within the notice within the period specified in the notice, and the undertaker must cease constructing the specified works or part thereof until such time as it has obtained the consent or complied with the condition specified within the notice served.

(4) The risks specified in sub-paragraph (3) are—

- (i) risk of flooding;
- (ii) risk of harm to the environment;
- (iii) risk of detrimental impact on drainage; or
- (iv) damage to the fishery.

(5) 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..

(6) Subject to sub-paragraph (7) 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.

(7) 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 (6) 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 within the period specified in the notice.

(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(6), 71(3), 72, 73(3) or 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;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

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 61 (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 NATIONAL HIGHWAYS LIMITED

Application etc.,

80.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 which shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

81.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) the latter prevail.

(2) In this Part of this Schedule—

“as built information” means one electronic copy of the following information—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;

- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 and stage 4 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's Asset Data Management Manual as is in operation at the relevant time.

“commuted sum” means such sum calculated as provided for in paragraph 92 of this Part of this Schedule to be used to fund the future cost of maintaining any new National Highways assets or structures or apparatus provided under the Order;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the development—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) regime of California Bearing Ratio testing;
- (k) electrical work for road lighting, traffic signs and signals;
- (l) motorway communications as required by DMRB;
- (m) highway structures and any required structural approval in principle;
- (n) landscaping;

- (o) proposed departures from DMRB standards;
- (p) walking, cycling and horse riding assessment and review report;
- (q) stage 1 and stage 2 road safety audits and exceptions agreed;
- (r) utilities diversions;
- (s) topographical survey;
- (t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (u) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (v) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

“DBFO contract” means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 91;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised works required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“highway operations and maintenance contractor” means the contractor appointed by National Highways under the DBFO contract;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 86 when it considers the specified works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

“specified works” means so much of any work, including highway works, street works and signalisation, authorised by this Order including any maintenance of that work, as is undertaken on, in, under or over the strategic road network for which National Highways is the highway authority;

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway;

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

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

General

82. In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of Schedule 12 but for the purposes of any approvals required under this Part of Schedule 12 the undertaker shall liaise directly with National Highways.

83. References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of Schedule 12, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

84. If the undertaker proposes to carry out works to the strategic road network that are outside of the Order limits in connection with the specified works, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals and security

85.—(1) The specified works must not commence until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works has been approved by National Highways;
- (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);
 - (ii) detailed drainage design taking in to account any existing National Highways drainage assets relevant to or in proximity to the specified works and the detailed drainage design must not include any connections in to National Highways’ existing drainage assets, in accordance with DfT Circular 01/2022, paragraph 59;
 - (iii) details of the proposed road space bookings and at the same time as submitting the relevant details the undertaker shall be entitled to submit its application for road space bookings to National Highways;
 - (iv) the identity and suitability of the contractor and nominated persons;
 - (v) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker; and
 - (vi) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding;

- (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
- (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;
- (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
- (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
- (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
- (i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
- (j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.

(2) The undertaker must not exercise—

- (a) Powers of maintenance in article 5 (power to construct and maintain works);
- (b) article 7 (power to alter layout, etc. of streets);
- (c) article 9 (power to execute street works)
- (d) article 11 (construction of new and stopping up of existing streets, means of access, etc.);
- (e) article 12 (temporary stopping up of streets);
- (f) article 13 (access and access to works);
- (g) article 18 (discharge of water);
- (h) article 19 (power to survey and investigate land, etc.);
- (i) article 23 (compulsory acquisition of land);
- (j) article 26 (power to acquire new rights and imposition of restrictive covenants);
- (k) article 28 (temporary use of land for construction of works);
- (l) article 29 (temporary use of land for maintenance of works);
- (m) article 33 (extinguishment or suspension of private rights);
- (n) article 34 (power to acquire subsoil or airspace only);
- (o) article 44 (traffic regulation); or
- (p) article 45 (power to lop trees overhanging the guided busway system) of this Order,

over any part of the strategic road network or land in which National Highways has an interest without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval.

(3) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1) or sub-paragraph (2).

(4) Any approval of National Highways required under this paragraph-

- (a) must not be unreasonably withheld;

- (b) must be given in writing;
- (c) shall be deemed to have been refused if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways within 2 months of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with sub-paragraph (1) of this paragraph.

Construction of the specified works

86.—(1) The undertaker must give National Highways 3 months' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out of the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 85(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.

(4) The undertaker must ensure that (where possible) without entering the highway the highway is kept free from mud, soil and litter as a result of carrying out a specified work.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the works pursuant to the Order including all land in which National Highways has an interest for the purposes of inspection and supervision of the works.

(6) If any part of the specified works is constructed-

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways.

(7) If during the carrying out of the authorised works the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(8) If within 28 days of the date on which a notice under sub-paragraph (6) or sub-paragraph (7) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(9) Nothing in this Part of Schedule 12 prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised works without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

(10) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.

(11) Until National Highways issues the provisional certificate the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 85(1)(h) and the undertaker must carry out such maintenance at its own cost.

(12) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 85(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

87.—(1) The undertaker must pay to National Highways a sum equal to the costs and expenses which National Highways reasonably and properly incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 85(1);
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land required for the specified works; and
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and
- (f) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised works.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 88(4).

(6) Within 28 days of the issue of the final account:

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

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

88.—(1) Following the completion of any specified works or prior to reopening any part of the strategic road network following any closure or partial closure, whichever shall be sooner, the undertaker shall notify National Highways who will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways following the site inspection.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable:

- (a) inspect the specified works; and
- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

- (a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;
- (b) the specified works incorporating the approved remedial works under sub-paragraph (a) and any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the satisfaction of National Highways;
- (c) the as built information has been provided to National Highways; and
- (d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) The undertaker must submit a stage 4 road safety audit as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Final condition survey

89.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 88(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to sub-paragraph (1) indicate that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to sub-paragraph (1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

(6) At any time following the issue of the final certificate under paragraph 91, the undertaker must make available to National Highways copies of any completed survey or inspection reports (produced in accordance with DMRB CS 450) carried out in respect of any inspection or survey by the undertaker of such part of a specified work comprising a structure over the strategic road network.

Defects Period

90.—(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);
- (b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the issuing of the provisional certificate National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

91.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable:

- (a) inspect the strategic road network; and
- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.

- (3) The undertaker must carry out such works notified to it pursuant to sub-paragraph (2).
- (4) When National Highways is satisfied that:
 - (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph (2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and
 - (b) the NH costs have been paid to National Highways in full;

National Highways must issue the final certificate.

(5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

Commuted sums

92.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

Insurance

93. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

94. The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

95.—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

Land

96. The undertaker must not under the powers of this Order:

- (a) acquire or use land forming part of;
- (b) acquire new or existing rights over; or
- (c) seek to impose or extinguish any restrictive covenants over;

any of the strategic road network or land owned by National Highways, or extinguish any existing rights of or interfere with apparatus of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk

Expert Determination

97.—(1) Article 61 (arbitration) of the Order does not apply to this Part of Schedule 12.

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

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert’s appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 61 (arbitration).

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

PART 9

FOR THE PROTECTION OF THE LEAD LOCAL FLOOD AUTHORITY

98.—(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 16 metres of a drainage work or is otherwise likely to affect any drainage work.

99.—(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 106.

(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).

100. Without limitation on the scope of paragraph 99, 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.

101.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the lead local flood authority under paragraph 100 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.

102.—(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.

103. 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.

104. 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.

105. 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.

106. 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 61 (arbitration).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Cambridgeshire County Council to construct and operate a new guided busway system between Sterling Way in Cambourne and Grange Road in 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, and book of reference mentioned in this Order and certified in accordance with article 58 (certification of plans, etc.) may be inspected free of charge during working hours at Cambridgeshire County Council, New Shire Hall, Emery Crescent, Enterprise Campus, Alconbury Weald, Huntingdon, PE28 4YE.