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STATUTORY INSTRUMENTS

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**2016 No. 73**

**INFRASTRUCTURE PLANNING**

**The A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016**

*Made* - - - - *28th January 2016*

*Coming into force* - - *18th February 2016*

An application has been made to the Secretary of State under section 37 of the Planning Act 2008<sup>(1)</sup> (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>(2)</sup> for an Order granting development consent.

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010<sup>(3)</sup>.

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has determined to make an Order granting development consent for the development described in the application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

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of, and paragraphs 1 to 3, 10 to 15, 17, 19, 21, 22, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

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(1) 2008. c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).  
(2) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/2381, S.I. 2015/377; modified by S.I. 2012/1659.  
(3) S.I. 2010/103, amended by S.I. 2012/635.

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 and comes into force on 18th February 2016.

#### Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(4);

“the 1965 Act” means the Compulsory Purchase Act 1965(5);

“the 1980 Act” means the Highways Act 1980(6);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(7);

“the 1984 Act” means the Road Traffic Regulation Act 1984(8);

“the 1990 Act” means the Town and Country Planning Act 1990(9);

“the 1991 Act” means the New Roads and Street Works Act 1991(10);

“the 2008 Act” means the Planning Act 2008(11);

“address” includes any number or address for the purposes of electronic transmission;

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

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

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

“British Telecommunications Public Limited Company” means the company of that name, company number 1800000, whose registered office is at 81 Newgate Street London EC1A 7AJ;

“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 and includes part of a carriageway;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act(12) and includes part of a cycle track;

“electronic transmission” means a communication transmitted—

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

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

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(4) 1961 c. 33.

(5) 1965 c. 56.

(6) 1980 c. 66.

(7) 1981 c. 66.

(8) 1984 c. 27.

(9) 1990 c. 8.

(10) 1991 c. 22.

(11) 2008 c. 29.

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

“the engineering drawings and sections” means the documents certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

“environmental report” means the environmental assessment report submitted with the application for this Order and certified as the environmental report by the Secretary of State for the purposes of this order;

“footpath” and “footway” have the same meaning as in the 1980 Act and include part of a footpath or footway;

“highway”, has the same meaning as in the 1980 Act and includes part of a highway;

“the highway authority” means the undertaker;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 5 (limits of deviation);

“the local highway authority” means North Tyneside Council;

“maintain” includes inspect, repair, adjust, alter, remove or reconstruct in relation to the authorised development and any derivative of “maintain” is to be construed accordingly;

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

“the Order limits” means the limits of deviation shown on the works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(13);

“Northern Gas Networks Limited” means the company of that name, company number 05167070, whose registered office is at 1100 Century Way, Thorpe Park Business Park, Colton, Leeds, LS15 8TU;

“Northern Powergrid Limited” means the company of that name, company number 03271033, whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF;

“Northumbrian Water Limited” means the company of that name, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;

“relevant planning authority” means North Tyneside Council;

“rights of way and access plans” means the plans certified as the rights of way and access plans by the Secretary of State for the purposes of this Order;

“Secretary of State” means the Secretary of State for Transport;

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

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

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

“traffic regulation plans” means the plans certified as the traffic regulation plans by the Secretary of State for the purposes of this Order;

“traffic authority” has the same meaning as in the 1984 Act;

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

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(13) 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.

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

- (a) section 10(14) or 19(1)(15) of the 1980 Act;
- (b) an order or direction under section 10 of that Act; or
- (c) an order granting development consent; or
- (d) any other enactment;

“undertaker” means Highways England Company Limited, company number 9346363, whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

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

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

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

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

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

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

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

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

#### **Maintenance of authorised development**

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

#### **Limits of deviation**

5.—(1) In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections, to a maximum of 0.5 metres upwards or 1.0 metre downwards.

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(14) As amended by section 22(2) of the 1991 Act and paragraph 22 of Schedule 2 to the 2008 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(15) As amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(2) Any deviation under paragraph (1) is only permitted if it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental report.

### **Benefit of Order**

6. Subject to article 7 (consent to transfer benefit of Order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

### **Consent to transfer benefit of Order**

7.—(1) The undertaker may—

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

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

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

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—

- (a) British Telecommunications Public Limited Company for the purposes of undertaking work number 2d;
- (b) Northern Powergrid Limited for the purposes of undertaking work numbers 2e and 2h;
- (c) Northumbrian Water Limited for the purposes of undertaking work number 2b; or
- (d) Northern Gas Network Limited for the purposes of undertaking work numbers 2a, 2f and 2g.

## **PART 3**

### **STREETS**

#### **Application of the 1991 Act**

8.—(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 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the local highway authority, might have been carried out in exercise of the powers conferred by section 64(16) (dual carriageways

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(16) As 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).

and roundabouts) of the 1980 Act or section 184 (vehicle crossings over footways and verges) of that Act.

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

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

- section 56(17) (directions as to timing);
- section 56A(18) (power to give directions as to placing of apparatus);
- section 58(19) (restrictions following substantial road works);
- section 58A(20) (restriction on works following substantial street works);
- section 73A(21) (power to require undertaker to re-surface street);
- section 73B(22) (power to specify timing etc. of re-surfacing);
- section 73C(23) (materials, workmanship and standard of re-surfacing);
- section 78A(24) (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A(25) (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 11 (temporary stopping up and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(26) referred to in paragraph (4) are—

- section 54(27) (advance notice of certain works), subject to paragraph (6);
- section 55(28) (notice of starting date of works), subject to paragraph (6);
- section 57(29) (notice of emergency works);
- section 59(30) (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);
- section 76 (liability for cost of temporary traffic regulation); and

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(17) As amended by sections 40 and 43 of the Traffic Management Act 2004 (c. 18).

(18) Inserted by section 44 of the Traffic Management Act 2004.

(19) As amended by section 51 of the Traffic Management Act 2004.

(20) Inserted by section 52 of the Traffic Management Act 2004.

(21) Inserted by section 55 of the Traffic Management Act 2004.

(22) Inserted by section 55 of the Traffic Management Act 2004.

(23) Inserted by section 55 of the Traffic Management Act 2004.

(24) Inserted by section 57 of the Traffic Management Act 2004.

(25) Inserted by section 52 and schedule 4 of the Traffic Management Act 2004.

(26) 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).

(27) As also amended by section 49(1) of the Traffic Management Act 2004.

(28) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(29) As also amended by section 52(3) of the Traffic Management Act 2004.

(30) As amended by section 42 of the Traffic Management Act 2004.

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 9 (construction and maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, 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 as respects which the provisions of Part 3 of the 1991 Act apply.

### **Construction and maintenance of new, altered or diverted streets**

9.—(1) Any street (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the street lies and, unless otherwise agreed with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of the street authority from its completion.

(3) In the case of a bridge constructed under this Order to carry a public right of way, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, must be maintained by and at the expense of the undertaker.

(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 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 dangers to users of the street;
- (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.

### **Classification of roads etc.**

**10.**—(1) From the date on which the roads described in Part 1 (trunk roads) of Schedule 3 (classification of roads, etc.) are complete and open for traffic, they are to become trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act<sup>(31)</sup> specifying that date as the date on which they were to become trunk roads.

(2) From the date on which the roads specified in Part 2 (roads subject to 50 miles per hour limit) of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding 50 miles per hour in the lengths of road identified in that Part of that Schedule.

(3) Unless otherwise agreed with the relevant planning authority the cycle tracks and footways set out in Part 3 (cycle tracks and footways) of Schedule 3 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.

(4) The application of paragraphs (1) and (3) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

### **Temporary stopping up and restriction of use of streets**

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

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

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

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

(4) The undertaker must not temporarily stop up, alter, divert or restrict the use of any street for which it is not the street authority without the consent of the street 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, under Part 1 of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph 11(4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Permanent stopping up and restriction of use of streets**

**12.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 4 (permanent stopping up of streets) to the extent specified and described in column (3) of that Schedule.

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<sup>(31)</sup> As amended by section 22 of the 1991 Act, and by section 1 and schedule 1 of the Infrastructure Act 2015.



(2) No street specified in columns (1) and (2) of Schedule 4 (being a street to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (3) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(3) The condition referred to in paragraph (2) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street concerned; or
- (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.

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

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

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

(6) This article is subject to article 30 (apparatus and rights of statutory undertakers in stopped up streets).

### **Access to works**

**13.** The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Clearways**

**14.—**(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads etc.) are open for traffic, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(2) Nothing in paragraph (1) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
  - (i) the removal of any obstruction to traffic;
  - (ii) the maintenance, improvement, reconstruction or operation of the road;
  - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 (the Telecommunications Code) to the Telecommunications Act 1984<sup>(32)</sup>; or
  - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
  - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;

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(32) 1984 c. 12.

- (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
  - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991<sup>(33)</sup>; or
  - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000<sup>(34)</sup>; or
- (c) in relation to a vehicle waiting when the person in control of it is—
- (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or
  - (iii) prevented from proceeding by circumstances outside the person’s control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in Part 1 of Schedule 3 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.

(4) Paragraphs (1), (2) and (3) 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.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004<sup>(35)</sup>.

## PART 4

### SUPPLEMENTAL POWERS

#### Discharge of water

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

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) 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<sup>(36)</sup>.

(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.

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<sup>(33)</sup> 1991 c. 56.

<sup>(34)</sup> 2000 c. 26.

<sup>(35)</sup> 2004 c. 18.

<sup>(36)</sup> 1991 c. 56. Section 106 was amended by section 35(1) and (8) 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).

(5) The undertaker must not, in carrying out or maintaining works under 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 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 Environmental Permitting (England and Wales) Regulations 2010<sup>(37)</sup>.

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(38)</sup> have the same meaning as in that Act.

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

### **Protective work to buildings**

**16.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

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

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

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

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

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<sup>(37)</sup> S.I.2010/675 as amended by S.I. 2011/2043 and S.I. 2013/390; there are other amending instruments but none are relevant.

<sup>(38)</sup> 1991 c. 57.

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 40 (arbitration).

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

(8) Where—

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

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

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(39) (compensation in case where no right to claim in nuisance) of the 2008 Act.

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

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

#### **Authority to survey and investigate the land**

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

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

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

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
  - (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes are to be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority or the local highway authority as the case may be; or
  - (b) in a private street without the consent of the street authority,
- but such consent must not be unreasonably withheld.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (6) If either the highway authority, the local 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 (4)(a) in the case of the highway authority or the local highway authority; or
  - (b) under paragraph (4)(b) in the case of a street authority,
- that authority is deemed to have granted consent.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

**18.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development.

(2) This article is subject to paragraph (2) of article 21 (compulsory acquisition of rights), paragraph (8) of article 27 (temporary use of land for carrying out the authorised development) and article 37 (Crown rights).

#### **Compulsory acquisition of land – incorporation of the mineral code**

**19.** Part 2 of Schedule 2 (minerals) to the Acquisition of Land Act 1981<sup>(40)</sup> is incorporated in this Order subject to the modification that for “the acquiring authority” substitute “the undertaker”.

#### **Time limit for exercise of authority to acquire land compulsorily**

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 23 (application of the 1981 Act).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this

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(40) 1981 c. 67.

paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

**21.**—(1) The undertaker may acquire such rights over the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act, as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires a right over land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

### **Private rights over land**

**22.**—(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) (power of entry) of the 1965 Act,

whichever is the earlier.

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

- (a) as from the date of the acquisition of the right 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) (power of entry) of the 1965 Act,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker which, being within the limits of land which may be acquired or used shown on the land plans, are required for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

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

(ii) the undertaker's appropriation of it;

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

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

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

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

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

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

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

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

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

### **Application of the 1981 Act**

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

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

(3) In section 1 (application of Act) for subsection (2) substitute—

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

(4) In section 3 (preliminary notices) for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated.”

(5) In that section, in subsection (2), for “(1)(b)” substitute “(1)” and after “given” insert “and published”.

(6) In that section, for subsections (5) and (6) substitute—

“(5) For the purposes of this section, a person has a relevant interest in land if—

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(7) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and

(b) omit subsection (2).

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

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

#### **Acquisition of subsoil or airspace only**

**24.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 18 (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 referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 25 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

#### **Acquisition of part of certain properties**

**25.**—(1) This article applies instead of section 8(1) (other provisions as to divided land) of the 1965 Act (as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act) where—

(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner must sell only the land subject to the notice to treat is, unless the undertaker agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or



(b) where the land subject to notice to treat forms part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to notice to treat forms part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and in that event must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

### **Rights under or over streets**

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

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

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

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

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

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

### **Temporary use of land for carrying out the authorised development**

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

(a) enter on and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
- (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;

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

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

(d) construct any permanent works specified in relation to that land in column (3) of Schedule 7, or any other mitigation works in connection with the authorised development.

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

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

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 7; or

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

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

(a) replace a building removed under this article;

- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
  - (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
  - (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.
- (5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—
- (a) acquiring new rights over any part of that land under article 21 (compulsory acquisition of rights); or
  - (b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 24 (acquisition of subsoil or airspace only).
- (9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (10) Section 13 (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 section 125 (application of compulsory acquisition provisions) of the 2008 Act.
- (11) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under articles 18 (compulsory acquisition of land) or 21.

### **Temporary use of land for maintaining the authorised development**

- 28.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—
- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; 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.

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

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

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the 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) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (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 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

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

### **Statutory undertakers**

**29.**—(1) Subject to the provisions of Schedule 8 (protective provisions) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights over, the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired or used permanently or temporarily and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land.

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

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) article 30 (apparatus and rights of statutory undertakers in stopped up streets).

### **Apparatus and rights of statutory undertakers in stopped up streets**

**30.**—(1) Where a street is stopped up under article 12 (permanent stopping up and restriction of use of streets), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 12 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
  - (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).
- (3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—
- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
  - (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.
- (4) If in the course of the execution of relocation works under paragraph (2)—
- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,
- and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.
- (5) For the purposes of paragraph (4)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
  - (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.
- (6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.
- (7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—
- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
  - (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.
- (8) In this article—
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
  - “relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151 (1) of the Communications Act 2003(41).

### **Recovery of costs of new connections**

**31.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29, any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 30 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article-

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

“public utility undertaker” has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act.

## **PART 6 OPERATIONS**

### **Felling or lopping of trees**

**32.—**(1) The undertaker may fell or lop any tree or shrub, or cut back its roots, within or overhanging land within the Order limits, 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 authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

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

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

## PART 7

### MISCELLANEOUS AND GENERAL

#### Application of landlord and tenant law

**33.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

(3) 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.

#### Operational land for purposes of the 1990 Act

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

#### Defence to proceedings in respect of statutory nuisance

**35.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990<sup>(42)</sup> in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act, no order is to be made, and no fine may be imposed, under section 82(2)<sup>(43)</sup> of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent

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<sup>(42)</sup> 1990 c. 43. There are amendments to this sub-section which are not relevant to this Order.

<sup>(43)</sup> Subsection 82(2) was amended by section 5(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection but none are relevant to this Order.

given under section 61 (prior consent for work on construction site), of the Control of Pollution Act 1974<sup>(44)</sup>; or

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

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

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

### Protection of interests

36. Schedule 8 (protective provisions) has effect.

### Crown rights

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

(a) to take, use, enter upon or in any manner interfere with any land or rights of any description

—

(i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

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

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

(b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown Land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(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.

### Certification of plans, etc.

38.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

(a) the book of reference;

(b) the land plans (document reference A19T-DWG-CIV-S00-0100-0067 revision D, A19T-DWG-CIV-S00-0100-0068 revision D, A19T-DWG-CIV-S00-0100-0069 revision G and A19T-DWG-CIV-S00-0100-0070 revision D);

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(44) 1974 c. 40. Section 61 was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43); there are other amendments to section 61 but none is relevant to this Order.



- (c) the rights of way and access plans (document reference A19T-DWG-CIV-S00-0100-0071 revision C);
- (d) the works plans (document reference A19T-DWG-CIV-S00-0100-0072 revision D, A19T-DWG-CIV-S00-0100-0073 revision D, A19T-DWG-CIV-S00-0100-0074 revision E and A19T-DWG-CIV-S00-0100-0075 revision E);
- (e) the engineering drawings and sections (document reference A19T-DWG-CIV-S00-0100-0057 revision B; A19T-DWG-CIV-S00-0100-0058 to 0061 revision B; A19T-DWG-CIV-S00-0100-0017 to 0019 revision C; A19T-DWG-CIV-S00-0100-0078 to 0083 revision B; and A19T-DWG-CIV-S00-0100-0042 to 0043 revision B);
- (f) the traffic regulation plans (document reference A19T-DWG-CIV-S00-0100-0084 revision D);
- (g) Crown Estate Land Plans (document reference A19T-DWG-CIV-S00-0100-0076 revision E; A19T-DWG-CIV-S00-0100-0085 revision D);
- (h) the outline construction environmental management plan (document reference A19T-EIA-ENV-SOO-3000-0020-revision A); and
- (i) the environmental report (document reference A19T-EIA-ENV-S00-3000-0020 revision B) and erratum no.1 (application document reference TR010017/6.5 Issue 1),

for certification that they are true copies of the documents referred to in this Order.

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

### **Service of notices**

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) 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<sup>(45)</sup> 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

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(45) 1978 c. 30.

- (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 to be taken to be fulfilled only where—
  - (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
  - (b) the notice or document is capable of being accessed by the recipient;
  - (c) the notice or document is legible in all material respects; and
  - (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
  - (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
  - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.
- (10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

### **Arbitration**

**40.** 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 giving notice in writing to the other) by the President of the Institution of Civil Engineers.

### **Traffic regulation**

- 41.—**(1) This article applies to roads in respect of which the undertaker is not the traffic authority.
- (2) 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, for the purposes of the authorised development—
- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
  - (b) permit, prohibit or restrict the stopping, 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 power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) 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 the undertaker has—

(a) given not less than—

(i) 12 weeks' notice in writing of the undertaker's 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 the undertaker's intention so to do 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 the undertaker's 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 (power of local authorities to provide parking spaces) of the 1984 Act<sup>(46)</sup>,

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 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004<sup>(47)</sup>.

(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 conferred by paragraph (2) within a period of 24 months from the opening of the authorised development.

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

<sup>(46)</sup> Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

<sup>(47)</sup> 2004 c. 18.

(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.

**Provision as to approvals etc. under Schedule 2**

**42.**—(1) Where the application is for a consent, agreement or approval required by a requirement under Schedule 2 (requirements), the following provisions apply, as far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of a planning permission—

- (a) sections 78 and 79 (right of appeal in relation to planning decisions) of the 1990 Act; and
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Signed by authority of the Secretary of State for Transport

*Martin Woods*  
Head of the Transport and Works Act Orders  
Unit  
Department for Transport

28th January 2016

## SCHEDULES

### SCHEDULE 1

Articles 2 and 3

#### AUTHORISED DEVELOPMENT

##### **In the administrative area of North Tyneside Council**

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act(**48**), comprising—

Work No. 1a - the construction of one half of a new bridge to carry the westbound A1058 Coast Road over the A19 cutting.

Work No. 1b - the construction of one half of a new bridge to carry the eastbound A1058 Coast Road over the A19 cutting.

Work No. 1c - the construction of a new bridge to carry the southern section of the A19 Roundabout over the A19 cutting.

Work No. 1d - the construction of a new bridge to carry the northern section of the A19 Roundabout over the A19 cutting.

Work No. 1e - the construction of a new southbound A19 on-slip road to the south of the A19/A1058 Coast Road junction.

Work No. 1f - the construction of a new northbound A19 off-slip road to the south of the A19/A1058 Coast Road junction predominantly through utilisation of the existing A19 northbound carriageway.

Work No. 1g - the construction of a new northbound A19 on-slip road to the north of the A19/A1058 Coast Road junction.

Work No. 1h - the construction of a new southbound A19 off-slip road to the north of the A19/A1058 Coast Road junction.

Work No. 1i - the construction of 2 new shared-use bridges over the eastbound A1058 Coast Road off-slip road and on-slip road to connect the existing footways and cycle tracks to the east and west of the junction to the footway and cycle track on the A1058 Coast Road through the A19/A1058 Coast Road junction.

Work No. 1j - the construction of a new section of A19 dual carriageway under the existing A19/A1058 Coast Road junction.

Work No. 1k - the widening of Middle Engine Lane Railway Bridge to the north of the A19/A1058 Coast Road junction.

Work No. 1l - the widening of the Silverlink road on the north-east of the A19/A1058 Coast Road junction to provide an additional southbound lane on the immediate approach to the A19 roundabout.

Work No. 1m – works on the A19 to tie in the proposed works at the southern extent of the authorised development with the existing highway layout.

Work No. 1n – the construction of a revised road cross section on the A19 to include an auxiliary lane in addition to two lanes on the A19 mainline in both north and southbound directions.

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(48) Section 22 was substituted by article 3 of [S.I. 2013/1883](#).

Work No. 1o – works on the A19 to tie in the proposed works at the northern extent of the authorised development with the existing highway layout.

Work No. 1p – the construction of a new traffic signal installation incorporating Microprocessor Optimised Vehicle Activation and enhanced non-motorised user facilities at the A19 roundabout.

Work No. 1q – a combined footway and cycle track between the A19/A1058 Coast Road junction and the A19/A193 Wallsend junction adjacent to the A19 northbound carriageway.

Work No. 1r – a combined footway and cycle track adjacent to the A19 southbound on-slip road linking the bus stop on the A1058 Coast Road westbound off-slip road and the access to the Tyne Tunnel Trading Estate.

Work No. 1s – concrete repair works to the existing A1058 structures that support the A1058 Coast Road over the A19 roundabout.

Work No. 2a – the diversion of a Northern Gas Network medium pressure main through the new bridge constructed to carry the southern section of the A19 roundabout over the A19 cutting.

Work No. 2b - the construction of a new potable water main for Northumbrian Water Limited along Middle Engine Lane and Middle Engine Railway bridleway.

Work No. 2d – the diversion of British Telecommunications Public Limited Company cables through the new bridge constructed to carry the northern section of the A19 roundabout over the A19 cutting<sup>(49)</sup>.

Work No. 2e – the diversion of Northern Powergrid high voltage cables through the new bridge constructed to carry the A1058 Coast Road over the A19 cutting.

Work No. 2f – the diversion of Northern Gas Network intermediate pressure mains within the verges of the A19 southbound on slip road and off slip road.

Work No. 2g – the diversion of a Northern Gas Network medium pressure main within the verge of the A19 southbound on slip road.

Work No. 2h – the diversion of Northern Powergrid low voltage cables within the Silverlink.

In connection with the construction of any of those works, further development within the Order limits consisting of—

- (a) alteration to the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (c) refurbishment works to any existing bridge,
- (d) ramps, means of access, non-motorised links, footpaths, cycle tracks and crossing facilities;
- (e) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (f) street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus in a street; works to alter the position of apparatus, including mains, sewers, drains and cables;
- (g) works to alter the course of or otherwise interfere with a watercourse;

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<sup>(49)</sup> The Order does not include a Work No. 2c, which is now to be carried out outside the scope of the Order.

- (h) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (i) works for the benefit or protection of land affected by the authorised development;
- (j) works required for the strengthening, improvement, maintenance or reconstruction of any streets;
- (k) works to alter or remove road furniture;
- (l) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage, site levelling);
- (m) establishment of site construction compounds, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting and haulage roads; and
- (n) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

## SCHEDULE 2

Article 3

### REQUIREMENTS

#### Interpretation

**1.** In this Schedule—

“CEMP” means construction environmental management plan;

“European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010<sup>(50)</sup>;

“protected species” means species which are subject to protection under the laws of England or which are European protected species; and

“suitably qualified ecologist” means an ecologist who is a full member of the Chartered Institute of Ecology and Environmental Management.

#### Time limits

**2.** The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

#### Construction Environmental Management Plan

**3.—(1)** No authorised development is to commence until a CEMP has been submitted to and approved in writing by the relevant planning authority.

(2) The CEMP must—

- (a) be substantially in accordance with the outline construction environmental management plan certified under article 38 (certification of plans, etc.);
- (b) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the proposed development;

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<sup>(50)</sup> S.I. 2010/490.

- (c) incorporate the measures as detailed in the environmental report;
  - (d) include information on the control measures required to mitigate and reduce potential impacts which reflect the mitigation measures included in sections 4 to 13 of the environmental report;
  - (e) require adherence to working hours of 7:00am to 7:00pm on Mondays to Fridays and 7:00am to 1:00pm on Saturdays, except for—
    - (i) works associated with changes to the traffic management layout;
    - (ii) works associated with the construction of tie-ins at slip roads;
    - (iii) works associated with concrete repairs to the existing A1058 structures at the A19 roundabout;
    - (iv) works associated with bridge resurfacing and waterproofing of the Middle Engine Lane and Middle Engine Lane structures;
    - (v) works associated with the medium pressure gas diversion across the A19 roundabout circulatory carriageway;
    - (vi) works associated with providing drainage connections across the A19 carriageway at the A19/A193 Wallsend Junction from the north and southbound verges;
    - (vii) works associated with traffic signal duct crossings and loops;
    - (viii) any emergency works;
  - (f) require adherence to working hours of 8:00am to 6:00pm on Mondays to Fridays for any works involving impact piling; and
  - (g) include management plans, working methods and mitigation measures for each of the topics covered in the environmental report, including—
    - (i) Air Quality Management Plan;
    - (ii) Landscape Plan;
    - (iii) Cultural Heritage Management Plan;
    - (iv) Ecology Management Plan;
    - (v) Materials Management Plan;
    - (vi) Site Waste Management Plan;
    - (vii) Noise and Vibration Management Plan; and
    - (viii) Water and Drainage Management Plan.
- (3) The authorised development must be constructed in accordance with the approved CEMP.

### **Landscaping**

4.—(1) No part of the authorised development is to commence until a written landscaping scheme for that part has been submitted to and approved in writing by the relevant planning authority.

(2) No part of the authorised development including vegetation clearance is to commence until an arboricultural walkover survey and tree survey for that part taking due regard to the guidance in *British Standard 5837:2012* have been undertaken to identify any significant constraints posed by trees.

(3) The landscaping scheme prepared under sub-paragraph (1) must be based on the preliminary landscape design contained in Appendix 6.3 to the environmental report and the results of the surveys undertaken under sub-paragraph (2).

(4) The landscaping scheme prepared under sub-paragraph (1) must include details of hard and soft landscaping works, including—



- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) details of existing trees to be retained, with measures for their protection during the construction period; and
- (f) implementation timetables for all landscaping works.

### **Implementation and maintenance of landscaping**

5.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under Requirement 4.

(2) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives consent in writing to a variation.

### **Fencing**

6. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the undertaker's Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the relevant planning authority in connection with the authorised development.

### **Contaminated land and groundwater**

7.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental report, the undertaker must cease construction of the authorised development in the vicinity of that contaminated land and must report it immediately in writing to the Environment Agency and relevant planning authority, and in agreement with the Environment Agency and the relevant planning authority undertake a risk assessment of the contamination which must be submitted to the relevant planning authority.

(2) Where the relevant planning authority determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose as well as a programme for the recommencement of construction of the authorised development in the vicinity of the contaminated land, must be prepared in consultation with the Environment Agency and submitted to the relevant planning authority for approval.

(3) No remedial measures constituting a material operation (as defined in section 155 (when development begins) of the 2008 Act) in respect of contamination of any land, including groundwater, within the Order limits are to be carried out until the scheme and programme for remedial measures has been approved in writing under sub-paragraph (2).

(4) Remedial measures must be carried out in accordance with the approved scheme and programme and construction must recommence in accordance with the programme for the recommencement of construction of the authorised development in the vicinity of the contaminated land.

(5) Where the relevant planning authority determines in writing that remediation is not necessary, construction of the authorised development in the vicinity of the contaminated land may recommence.

### **Archaeology**

**8.—**(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the mitigation measures included in section 5 of the environmental report, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).

(3) A copy of any analysis, reporting, publication or archiving required as part of the written scheme referred to in sub-paragraph (1) must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority.

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported to the relevant planning authority within a period of 14 days from the date they are identified.

(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date they are identified unless otherwise agreed in writing by the relevant planning authority.

(6) If the relevant planning authority determines in writing that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority.

### **Ecological management plan**

**9.—**(1) No part of the authorised development is to commence until a written ecological management plan applicable to that part, reflecting the survey results and ecological mitigation measures included in section 7 of the environmental report, and including a timetable for its implementation, has been prepared in consultation with Natural England in so far as relevant to protected species or protected sites and submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved ecological management plan referred to in sub-paragraph (1).

(3) In the event that any protected species, or evidence of protected species, is found at any time when carrying out the authorised development, which was not previously identified in the environmental report, the undertaker must cease construction and contact a suitably qualified ecologist (“SQE”) to seek advice as to whether a method statement or species protection plan or both must be prepared to ensure the protection of the protected species.

(4) If the SQE advises the undertaker that a method statement or species protection plan is required under sub-paragraph (3), the undertaker must in consultation with the SQE and Natural England prepare a method statement or species protection plan together with a programme for its implementation and the recommencement of construction to be submitted to the relevant planning authority for approval in writing.

(5) The undertaker must implement the method statement or species protection plan in accordance with the programme for implementation and recommencement of construction approved under sub-paragraph (4).

(6) If the SQE advises the undertaker that a method statement or species protection plan is not required under sub-paragraph (3), the undertaker may recommence construction following receipt of written confirmation from the SQE.

### **Traffic Management**

**10.**—(1) No authorised development is to commence until a traffic management plan for the construction of the authorised development has been prepared in consultation with the local highway authority and submitted to and approved in writing by the undertaker.

(2) The authorised development must be constructed in accordance with the approved management plan.

### **Detailed design**

**11.** The authorised development must be carried out in accordance with the scheme design shown on the engineering drawings and sections or with any altered scheme design approved in writing by the relevant planning authority, provided that the development so altered falls within the limits of deviation and any alterations are minor or immaterial.

### **Surface and foul water drainage**

**12.**—(1) No authorised development is to commence until written details of the surface and foul water drainage system, reflecting the mitigation measures in section 12 of the environmental report and including means of pollution control, have been prepared in consultation with the Environment Agency and submitted to and approved in writing by the relevant planning authority.

(2) The drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1).

### **Approvals and amendments to approved details**

**13.**—(1) Where the agreement or approval of the relevant planning authority is required under any requirement in this Schedule, such agreement or approval may only be given where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the agreement or approval sought is unlikely to give rise to any materially different adverse environmental effect from those assessed in the environmental report.

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the relevant planning authority.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE 3

Article 10

## CLASSIFICATION OF ROADS, ETC.

## PART 1

## TRUNK ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road to become a Trunk Road</i>
North Tyneside	Southbound A19 on-slip road to the south of the A19/A1058 Coast Road junction between point 1/1 and point 1/2 on the rights of way and access plans, comprising 364 metres.
North Tyneside	Northbound on-slip road to the north of the A19/A1058 Coast Road junction between point 1/3 and point 1/4 on the rights of way and access plans, comprising 475 metres.
North Tyneside	Southbound off-slip road to the north of the A19/A1058 Coast Road junction between point 1/5 and point 1/6 on the rights of way and access plans, comprising 407 metres.
North Tyneside	New section of A19 dual carriageway under the existing A19/A1058 Coast Road junction between point 1/7 and point 1/8 on the rights of way and access plans, comprising 867 metres.

## PART 2

## ROADS SUBJECT TO 50 MILES PER HOUR LIMIT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
North Tyneside	Southbound A19 on slip road to the south of the A19/A1058 Coast Road junction between point 1/1 and point 1/2 on the traffic regulation plans, comprising 364 metres.
North Tyneside	Northbound A19 off slip road to the south of the A19/A1058 Coast Road junction between point 1/3 and point 1/4 on the traffic regulation plans, comprising 544 metres.
North Tyneside	Northbound on slip road to the north of the A19/A1058 Coast Road junction between point 1/5 and point 1/6 on the traffic regulation plans, comprising 475 metres.
North Tyneside	Southbound off slip road to the north of the A19/A1058 Coast Road junction between point 1/7 and point 1/8 on the traffic regulation plans, comprising 407 metres.
North Tyneside	A19 mainline on both north and southbound carriageways from point 1/9 to point 1/10 on the traffic regulation plans, comprising 2,120 metres.

### PART 3

#### CYCLE TRACKS AND FOOTWAYS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of Cycle track/Footway</i>
North Tyneside	1,186 metres combined footway and cycle track from point 1/11 to point 1/12 on the traffic regulation plans.
North Tyneside	237 metres combined footway and cycle track from point 1/13 to point 1/14 on the traffic regulation plans.
North Tyneside	418 metres combined footway and cycle track from point 1/15 to point 1/16 on the traffic regulation plans.
North Tyneside	339 metres combined footway and cycle track from point 1/17 to point 1/18 on the traffic regulation plans.
North Tyneside	113 metres combined footway and cycle track from point 1/19 to point 1/20 on the traffic regulation plans.

#### SCHEDULE 4

Article 12

#### PERMANENT STOPPING UP OF STREETS

##### *STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED*

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
North Tyneside	Closure of a layby on A19 mainline northbound carriageway as shown on the traffic regulation plans.	Location 1/21 on the traffic regulation plans.
North Tyneside	Closure of a layby on A19 mainline southbound carriageway as shown on the traffic regulation plans.	Location 1/22 on the traffic regulation plans.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE 5

Article 21

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

<i>(1)</i> <i>Plot reference number shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
<b>Land Plans – Sheet 2</b>		
2/7 and 2/7a	To access Plot 2/4a that is to be temporarily acquired for use in connection with the construction of the authorised development.	All work elements
<b>Land Plans – Sheet 3</b>		
3/3c	To construct, operate, access and maintain a new potable water supply for Northumbrian Water Limited.	Work No 2b
3/12	To construct, access and maintain a retaining wall.	Work No 1h
3/14a	To access plots 3/12, 3/12a and 3/3q in order to inspect and maintain the retaining wall and access plot 3/14 that is to be temporarily acquired for use in connection with the construction of the authorised development.	Work No 1h and Work No 1k
<b>Land Plans – Sheet 4</b>		
4/3e and 4/3f	To construct, operate, access and maintain a new potable water supply station and a new foul sewer for Northumbrian Water Limited.	Work No 2b

## SCHEDULE 6

Article 21

## MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

**Compensation enactments**

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973<sup>(51)</sup> has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

(a) for “land is acquired or taken from” substitute “a right over land is purchased from”; and

<sup>(51)</sup> 1973 c. 26.

(b) for “acquired or taken from him” substitute “over which the right is exercisable”.

(3) In section 58(1)(52) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5, substitute—

2.—“(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over land consisting of a house, building or manufactory can be taken without material detriment or damage to the house, building or manufactory; or
- (b) a right over land consisting of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right but also the use to be made of the right proposed to be acquired, and, in a case where the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”.

### **Application of the 1965 Act**

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

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

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

5. For section 8 (provisions as to divided land) of the 1965 Act substitute—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—

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(52) Section 58(1) was amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

- (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
- (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016<sup>(53)</sup> (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

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

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

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

7. Section 11<sup>(54)</sup> (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12<sup>(55)</sup> (penalty for unauthorised entry) and 13<sup>(56)</sup> (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20<sup>(57)</sup> (protection for interests of 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

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<sup>(53)</sup> S.I. 2016/73.

<sup>(54)</sup> 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) and S.I. 2009/1307.

<sup>(55)</sup> Section 12 was amended by section 56(2) of, and part 1 of schedule 9 to, the Courts Act 1971 (c. 23).

<sup>(56)</sup> Section 13 was amended by section 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).

<sup>(57)</sup> Section 20 was amended by paragraph 4 of schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.



any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

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

## SCHEDULE 7

Article 27

## LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Plan reference number(s) shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
<b>Land Plans – Sheet 2</b>			
In the administrative area of North Tyneside Council	2/4a	Required for the provision of a site construction compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and material and the treatment of site generated waste.	All Works
<b>Land Plans – Sheet 3</b>			
In the administrative area of North Tyneside Council	3/14	Required for access to construct the authorised development, and may also be used to store materials with a low economic value such as top soil, sub base etc., in relation to the widening of Middle Engine Railway Bridge, the diversion of a Northumbrian Water Limited potable water supply and the construction of a retaining wall.	Work No.1h Work No. 1k Work No. 2b

## SCHEDULE 8

Articles 29 and 36

## PROTECTIVE PROVISIONS

## PART 1

FOR THE PROTECTION OF ELECTRICITY,  
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<sup>(58)</sup>), belonging to or maintained by that utility undertaker;
- (b) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (c) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991<sup>(59)</sup>; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)<sup>(60)</sup> of that Act or an agreement to adopt made under section 104<sup>(61)</sup> of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 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” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe 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 water undertaker within the meaning of the Water Industry Act 1991; and
- (c) a sewerage undertaker within the meaning of Part I of the Water Industry Act 1991,

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<sup>(58)</sup> 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24, and 38(1) and (3) of schedule 6 to the Utilities Act 2000 (c. 27).

<sup>(59)</sup> 1991 c. 56.

<sup>(60)</sup> As amended by section 96(1) of the Water Act 2003 (c. 37).

<sup>(61)</sup> As amended by section 96(4) of the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29).

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

### **On street apparatus**

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus in stopped up streets**

4.—(1) Where any street is stopped up under article 12 (permanent stopping up and restriction of use of streets), 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 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 11 (temporary stopping up and restriction of use 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.

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

### **Acquisition of land**

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

7.—(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 40 (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 40, 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**

**8.—**(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 40 (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**

**9.—**(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of

the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) 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 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, or involve embankment works within 10 metres of any electricity apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed, 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;
- (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**

**10.**—(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 7(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 40 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-

paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

**11.**—(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 5 or 7(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**

**12.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, 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 development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. 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 NORTHERN GAS NETWORKS LIMITED

#### Application

14. For the protection of the utility undertaker the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker.

#### Interpretation

15. In this Part of this Schedule—

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

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purpose of gas supply and include 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 works, apparatus or alternative apparatus in land includes a reference to such works, apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” include the ability and right to do any of the following: construct, use, repair, alter, inspect, renew or remove;

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

“utility undertaker” means Northern Gas Networks Limited, a gas transporter within the meaning of Part 1 of the Gas Act 1986(62).

16. Except for paragraphs 17 (apparatus of utility undertaker in stopped up streets), 21 (retained apparatus: protection), 22 (expenses) and 23 (indemnity), this Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

#### Apparatus of utility undertaker in stopped up streets

17.—(1) Where any street is stopped up under article 12 (permanent stopping up and restriction of use of streets) and the utility undertaker has apparatus which is in that street or accessed via that street, the utility undertaker has the same rights in respect of such 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 prior to the stopping up of any such street.

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(62) 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 paragraphs 1 and 4 of schedule 6, and schedule 8 to, the Utilities Act 2000 (c. 27), sections 149(1) and (5) and 197(9) of, and part 1 of schedule 23 to, the Energy Act 2004 (c. 20) and S.I. 2011/2704.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 11 (temporary stopping up and restriction of use of streets), the 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, subject always to the undertaker's unimpeded ability to carry out the authorised development.

### **Acquisition of land**

**18.** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any apparatus or override any easement or other interest of the utility undertaker otherwise than by agreement.

### **Removal or diversion of apparatus**

**19.—(1)** If the undertaker acquires any interest in land in which the utility undertaker's apparatus is placed, that apparatus must not be removed and any right of the 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.

(2) If, for the purpose of executing any works, the undertaker requires the removal or diversion of any apparatus, it must give to the utility undertaker 90 days' advance written notice of that requirement, together with a plan of the works and the removal or diversion works proposed, the proposed position of the alternative apparatus, and the proposed timeline for the works. The utility undertaker must reasonably approve these details. The undertaker must afford to the utility undertaker to its reasonable satisfaction the necessary facilities and rights for

- (a) the construction of alternative apparatus in other land; and
- (b) the maintenance of that apparatus,

and the utility undertaker must commence the planning for the removal or diversion works within 90 days of receiving notice under this sub-paragraph and must complete the works using its reasonable endeavours to meet the undertaker's proposed timeline, and in any event without undue delay, in accordance with the details provided by the undertaker under this sub-paragraph or as otherwise reasonably agreed by the undertaker.

(3) If, in consequence of the works carried out by the undertaker, the utility undertaker reasonably needs to remove or divert any of its apparatus, it must without undue delay give the undertaker written notice of that requirement, together with a plan of the work proposed, the proposed position of the alternative apparatus and the proposed timeline for the works. The undertaker must reasonably approve these details and must afford to the utility undertaker to its reasonable satisfaction the necessary facilities and rights for—

- (a) the construction of alternative apparatus; and
- (b) the maintenance of that apparatus,

and the utility undertaker must commence the planning for the removal or diversion works within 90 days of the details of its proposed works being approved by the undertaker under this sub-paragraph, and must complete the works without undue delay and in accordance with the approved details.

(4) If the utility undertaker 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 or diversion works under sub-paragraph (2) within 70 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved, provided that the undertaker has first taken all reasonable steps to contact the relevant representatives of the utility undertaker in order to elicit such a response.



(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-paragraphs (2) and (3), the utility undertaker must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, but this obligation does not require the utility undertaker to use its compulsory purchase powers unless it elects to so do.

(6) Paragraphs 22 (expenses) and 23 (indemnity) of this Part of this Schedule apply to removal or diversion works under this paragraph, but the utility undertaker must provide to the undertaker for its approval a cost estimate for works that the utility undertaker proposes to carry out, and the undertaker is not liable for any costs under this paragraph that are not in accordance with an estimate that it has approved.

### **Facilities and rights for alternative apparatus**

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

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus are less favourable on the whole to the utility undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, then the undertaker and the utility undertaker must agree appropriate compensation.

(3) If the amount of compensation cannot be agreed, then either the undertaker or the utility undertaker may refer the matter to arbitration, and the arbitrator must make such provision for the payment of compensation by the undertaker to the utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection**

**21.**—(1) Not less than 56 days before commencing the execution of any works that will or may affect any apparatus, the removal or diversion of which has not been required by the undertaker under paragraph 19(2) or otherwise, the undertaker must submit to the utility undertaker in question a plan showing the works and the apparatus.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed including a material statement and describing—

- (a) the exact position of the works;
- (b) the level at which the works 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; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any apparatus.

(3) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) or (2) applies until the utility undertaker has given written approval of the plan submitted under sub-paragraph (1).

(4) Any approval of the utility undertaker required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld or delayed; and
- (c) is deemed to be granted after the expiry of 70 days from receipt by the utility undertaker of the plan if no material response to the request for approval has been provided within the initial 56 day period, provided that the undertaker must have first taken all reasonable steps to contact the relevant representatives of the utility undertaker in order to elicit such a response. In any event no work is to proceed without the utility undertaker's consent (not to be unreasonably withheld or delayed).

(5) In relation to a work to which sub-paragraph (2) applies, the utility undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system 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 executed under the Order to which this paragraph applies must be executed only in accordance with the relevant plan, notified under sub-paragraph (1) or approved (with conditions, if applicable) under sub-paragraph (4), as amended from time to time by agreement between the undertaker and the utility undertaker. The utility undertaker is entitled to watch and inspect the execution of those works.

(7) Where the utility undertaker requires any protective works (whether of a temporary or permanent nature) or subsidence monitoring to be carried out either by itself or by the undertaker, the utility undertaker must give the undertaker notice of such requirement in its approval under sub-paragraph (3), and—

- (a) such protective works must be carried out to the utility undertaker's reasonable satisfaction prior to the carrying out of the relevant part of the works;
- (b) ground subsidence monitoring must be carried out in accordance with a scheme approved by the utility undertaker (such approval not to be unreasonably withheld or delayed), which must set out—
  - (i) the apparatus which is to be subject to such monitoring;
  - (ii) the extent of land to be monitored;
  - (iii) the manner in which ground levels are to be monitored;
  - (iv) the timescales of any monitoring activities; and
  - (v) the extent of ground subsidence which, if exceeded, is to require the undertaker to submit for the utility undertaker's approval a ground subsidence mitigation scheme in respect of such subsidence;
- (c) if a subsidence mitigation scheme is required, it must be carried out as approved (such approval not to be unreasonably withheld or delayed).

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the relevant 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.

(9) The undertaker is not required to comply with sub-paragraph (1) or (2) where it needs to carry out emergency works as defined in the 1991 Act, but in that case it must give to the utility undertaker notice as soon as is reasonably practicable and a plan of those works to comply with

the other requirements in this paragraph in so far as is reasonably practicable in the circumstances, provided that the undertaker always complies with sub-paragraph (10).

(10) At all times when carrying out any works authorised under this Order, the undertaker must comply with the utility undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Northern Gas Networks, Gas pipelines and associated installation requirements for third parties NGN/SPSSW22" and Health and Safety Executive guidance document "HS(G)47 Avoiding Danger from underground services".

## **Expenses**

**22.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the utility undertaker on demand all charges, costs and expenses reasonably incurred by the utility undertaker in, or in connection with, the inspection, removal or diversion, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be reasonably required and necessary in consequence of the execution of the works, including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus, including without limitation in the event that the utility undertaker elects to use compulsory acquisition powers to acquire any necessary rights under paragraph 19(7), all costs reasonably incurred as a result of such action;
- (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;
- (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 works referred to in this Part of this Schedule; and
- (g) any statutory loss of supply payments under the 'Guaranteed Standards of Service' regime that the utility undertaker may incur in consequence of the works, but in the event that such payments are likely to become payable, the utility undertaker must give the undertaker notice as soon as reasonably practicable of the payments and their likely amount.

(2) The utility undertaker must use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any expenses capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, the utility undertaker is to provide an explanation of how the claimed expenses have been minimised. The undertaker is only liable to pay expenses that have been reasonably incurred.

(3) 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 and which is not re-used as part of the alternative apparatus, that value being calculated after removal, net of disposal costs.

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

- (a) apparatus 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 situated,

then, if this incurs greater expense than would have been incurred by a like-for-like (or as close as practicable to like-for-like) replacement at the same depth, the undertaker is not liable for this additional expense.

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

### **Indemnity**

**23.**—(1) Subject to sub-paragraphs (2), (3) and (4), if by reason or in consequence of the construction of any works carried out under this Part of this Schedule or in consequence of the construction, use, maintenance of the works by or on behalf of the undertaker or failure of any of the works in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, there is subsidence resulting from any of the works, or 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 the utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the utility undertaker, or the utility undertaker becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by the utility undertaker in making good such damage or restoring the supply; and
- (b) indemnify the utility undertaker for any other expenses, loss (other than consequential losses), demands, proceedings, damages, claims, penalties or costs (except to the extent that those liabilities are due to the sole, partial or complete act, neglect or default of the utility undertaker) incurred by or recovered from the utility undertaker.

(2) The fact that any act or thing may have been done by the utility undertaker on behalf of the undertaker or in accordance with a plan approved by the utility undertaker or in accordance with any requirement of the utility undertaker or under its supervision does not (subject to sub-paragraph (4)), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) The utility undertaker must use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any costs, expenses, losses, demands, penalties etc. capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, the utility undertaker must provide an explanation of how the claimed expenses have been minimised. The undertaker is only liable to pay expenses that have been reasonably incurred.

(4) 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 neglect or default of the utility undertaker, its officers, servants, contractors or agents.

(5) The utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without first consulting the undertaker and considering its promptly made representations to the extent practicable.

### **Enactments and agreements**

**24.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and the utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker.

### **Co-operation**

**25.** Where in consequence of the proposed construction of any of the authorised development the undertaker or the utility undertaker requires the removal of apparatus in accordance with the

provisions of this Part of this Schedule, the undertaker must use its best endeavours to co-ordinate the execution of the works to or for the benefit of the apparatus in the interests of safety and the efficient and economic execution of such works, taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking, and the utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

### **Access**

**26.** If in consequence of an agreement reached in accordance with paragraph 18 or the powers granted under this Order, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable the utility undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**27.** Any difference or dispute arising between the undertaker and the utility undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and that utility undertaker, be determined by arbitration in accordance with article 40 (arbitration).

### **Works falling outside of development authorised by the Order**

**28.** Nothing in this schedule requires the undertaker to carry out works, or requires the undertaker to enable the utility undertaker to carry out works, that are not authorised by this Order. The utility undertaker must not request any alteration, diversion, protective work or any other work which is not authorised to be carried out under this Order (but for the avoidance of doubt, it may elect to carry out such works itself under any other planning permission available to it).

## **PART 3**

### **FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS**

**29.** For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

**30.** In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(**63**);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is to be construed in accordance with paragraph 1(3A)(**64**) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(**65**);

“electronic communications code network” means—

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

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(63) 2003 c. 21.

(64) Paragraph 1(3A) was inserted by section 106(2) of, and paragraph 1 and 4 of schedule 3 to, the Communications Act 2003.

(65) See section 106 of the 2003 Act.

- (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.

**31.** The exercise of the powers conferred by article 29 (statutory undertakers) is subject to paragraph 23 of Schedule 2 (undertaker’s works) to the Telecommunication Act 1984<sup>(66)</sup>.

**32.—**(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development, 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 40 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

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<sup>(66)</sup> 1984 c. 12, Paragraph 23 was amended by section 190 of, and paragraph 68 of schedule 25 and part 1 of schedule 27 to, the Water Act 1989 (c. 15), section 112(4) of, and schedule 18 to, the Electricity Act 1989 (c. 29) and section 106(2) of, and paragraphs 1, 5(d) and 8 of schedule 3 to, the Communications Act 2003.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order authorises Highways England to improve the A19 junction with the A1058 in North Tyneside and carry out all associated works in order to reduce congestion and improve road safety.

The Order permits Highways England 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 authorised development.

A copy of the plans, engineering drawings and sections and the book of reference mentioned in this Order and certified in accordance with article 38 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Lateral, 8 City Walk, Leeds, West Yorkshire, LS11 9AT.