

SCHEDULE 3

Article 2

Model provisions for harbours

CONTENTS

Preliminary

1. Interpretation
2. Incorporation of the Harbours, Docks and Piers Clauses Act 1847

Principal powers

3. Development consent etc. granted by the Order
4. Period for completion of work
5. Limits of harbour
6. Maintenance of authorised project
7. Subsidiary works
8. Benefit of Order
9. Consent to transfer benefit of Order

Streets

10. Street works
11. Stopping up of streets
12. Temporary stopping up of streets
13. Access to works
14. Agreements with street authorities
15. Public rights of way

Supplemental powers

16. Discharge of water
17. Protective work to buildings
18. Authority to survey and investigate the land
19. Removal of human remains
20. Right to dredge
21. Tidal works not to be executed without approval of Secretary of State
22. Abatement of works abandoned or decayed
23. Survey of tidal works
24. Lights on tidal works etc. during construction
25. Provision against danger to navigation
26. Permanent lights on tidal works
27. Rights to lease etc.

Powers of acquisition

28. Compulsory acquisition of land
29. Compulsory acquisition of land – incorporation of the mineral code

Status: This is the original version (as it was originally made).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

30. Time limit for exercise of authority to acquire land compulsorily
31. Compulsory acquisition of rights
32. Private rights of way
33. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
34. Acquisition of subsoil only
35. Acquisition of land limited to subsoil lying more than 9 metres beneath surface
36. Acquisition of part of certain properties
37. Rights under or over streets
38. Temporary use of land for carrying out the authorised project
39. Temporary use of land for maintaining authorised project
40. Special category land
41. Statutory undertakers
42. Apparatus and rights of statutory undertakers in stopped up streets
43. Recovery of costs of new connections

Miscellaneous and general

44. Deemed consent under section 34 of the Coast Protection Act 1949
45. Deemed licence under Part 2 of the Food and Environment Protection Act 1985
46. Felling or lopping of trees
47. Trees subject to tree preservation orders
48. Railway and navigation undertakings
49. Application of landlord and tenant law
50. Operational land for purposes of the 1990 Act
51. Defence to proceedings in respect of statutory nuisance
52. Protection of interests
53. Saving for Trinity House
54. Disapplication of regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994
55. Planning, etc. jurisdiction
56. Certification of plans etc
57. Arbitration

Schedule A

AUTHORISED PROJECT

Part 1

AUTHORISED DEVELOPMENT

Part 2

ANCILLARY WORKS

Schedule B

STREETS SUBJECT TO STREET WORKS

Schedule C

STREETS TO BE STOPPED UP

Part 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

Part 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

Schedule D

STREETS TO BE TEMPORARILY STOPPED UP

Schedule E

ACCESS TO WORKS

Schedule F

LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE MAY BE ACQUIRED

Schedule G

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Schedule H

DEEMED CONSENT UNDER COAST PROTECTION ACT 1949

Schedule I

DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION ACT 1985

Schedule J

TREES SUBJECT TO TREE PRESERVATION ORDERS

Schedule K

LIMITS OF HARBOUR

Schedule L

PROTECTIVE PROVISIONS

Signature
Explanatory Note

Preliminary

Interpretation

1.—(1) In this Order—

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

- “the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(1);
- “the 1961 Act” means the Land Compensation Act 1961(2);
- “the 1965 Act” means the Compulsory Purchase Act 1965(3);
- “the 1980 Act” means the Highways Act 1980(4);
- “the 1990 Act” means the Town and Country Planning Act 1990(5);
- “the 1991 Act” means the New Roads and Street Works Act 1991(6);
- “the 2008 Act” means the Planning Act 2008(7);
- “ancillary works” means the ancillary works described in Part 2 of Schedule A (authorised project) [and any other works authorised by the Order] and which are not development within the meaning of section 32 of the 2008 Act;
- “area of seaward construction activity” means the area of the sea within the Order limits shown on the land plan;
- “authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;
- “the authorised project” means the authorised development and the ancillary works authorised by this Order;

-
- (1) [1847 c.27](#). Sections 24, 94 and 95 were repealed by the Statute Law (Repeals) Act [1993 \(c.50\)](#); section 26 was repealed by section 56(4) of, and Schedule 11 to, the Courts Act [1971 \(c.23\)](#); section 28 was amended by section 141 of, and Schedule 11 to, the Post Office Act [1969 \(c.48\)](#); sections 54, 67 and 98 were amended by section 46 of the Criminal Justice Act [1982 \(c.48\)](#); section 71 was amended by [S.I.1987/37](#); section 91 was repealed by the Statute Law Revision Act [1894 \(c.56\)](#); section 93 was repealed by the Statute Law Revision Act [1875 \(c.66\)](#); and section 96 was repealed by the Perjury Act [1911 \(c.6\)](#), section 17. There are other amendments to the 1847 Act which are not relevant to this Order.
- (2) [1961 c.33](#). Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act [1980 \(c.65\)](#). There are other amendments to the 1961 Act which are not relevant to this Order.
- (3) [1965 c.56](#). Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the [Planning and Compensation Act 1991 \(c.34\)](#). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act [1985 \(c.71\)](#). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the [Planning and Compensation Act 1991 \(c.34\)](#). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act [1981 \(c.67\)](#) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the [Church of England \(Miscellaneous Provisions\) Measure 2006 \(2006 No.1\)](#). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act [1971 \(c.23\)](#). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act [2007 \(c.15\)](#). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the [Planning and Compensation Act 1991 \(c.34\)](#). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act [1973 \(c.39\)](#). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the [Planning and Compensation Act 1991 \(c.34\)](#) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the [Church of England \(Miscellaneous Provisions\) Measure 2006 \(2006 No.1\)](#). There are other amendments to the 1965 Act which are not relevant to this Order.
- (4) [1980 c.66](#). Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act [1991 \(c.22\)](#); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act [1985 \(c.51\)](#); section 1(2A) was inserted by and section 1(3) was amended by section 259 (1), (2) and (3) of the Greater London Authority Act [1999 \(c.29\)](#); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act [1994 \(c.19\)](#). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act [1985 \(c.71\)](#), by [S.I. 2006/1177](#), by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act [1990 \(c.11\)](#), by section 64(1) (2) and (3) of the [Transport and Works Act \(c.42\)](#) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act [2000 \(c.37\)](#); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by [S.I. 2006/1177](#); section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act [1985 \(c.51\)](#); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act [1994 \(c.19\)](#). Section 329 was amended by section 112(4) of, and Schedule 18 to the Electricity Act [1989 \(c.29\)](#) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act [1989 \(c.15\)](#). There are other amendments to the 1980 Act which are not relevant to this Order.
- (5) [1990 c.8](#). Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act [2008 \(c.29\)](#) (date in force to be appointed see section 241(3) and (4)(a) and (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (6) [1991 c.22](#). Section 48(3A) was inserted by section 124 of the Local Transport Act [2008 \(c.26\)](#). Sections 79(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act [2004 \(c.18\)](#).
- (7) [2008 c.29](#).

“the book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

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

“carriageway” has the same meaning as in the 1980 Act;

“conservancy authority” has the same meaning as in section 313 of the Merchant Shipping Act 1995⁽⁸⁾;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the decision-maker” has the same meaning as in section 103 the 2008 Act;

“harbour” means the harbour constructed by the undertaker in pursuance of the powers conferred on them by *[insert title of Act/Orders]* Acts and Orders *[insert dates of Act/Orders]* and this Order and includes the open cut or channel also constructed under those powers, and all other works, land, buildings, ancillary works, plant, property and conveniences connected with them, as from time to time existing;

“the harbourmaster” means the harbourmaster appointed under this Order;

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

“the land plan” means the plan certified as the land plan by the decision-maker for the purposes of this Order;

“level of high water” means the level of mean high-water springs;

“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;

“the Order limits” means the limits shown on the works plan within which the authorised project may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981⁽⁹⁾;

“relevant planning authority” means—

- (i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;
- (ii) a National Park Authority;
- (iii) the Broads Authority; and
- (iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;

“rights plan” means the plan certified as the rights plan by the decision-maker for the purposes of this Order;

“the sections” means the sections shown on the plan certified as the section drawings plan by the decision-maker for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 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;

⁽⁸⁾ 1995 c.21. There are amendments to section 313 which are not relevant to this Order.

⁽⁹⁾ 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

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

“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

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

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

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act;

“the undertaking” means the harbour undertaking of the undertaker as authorised from time to time;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“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 plan” means the plan certified as the works plan by the decision-maker for the purposes of this Order.

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

(3) All points, directions, lengths, areas and other measurements stated in this Order are approximate and distances between points on a work comprised in the authorised project shall be taken to be measured along that work.

(4) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

[NOTE: In the case of off-shore development, which is outside the area of any planning authority, it will be necessary to identify another appropriate body instead of the planning authority.]

Incorporation of the Harbours, Docks and Piers Clauses Act 1847

2.—(1) With the exception of sections 6 to 23, 25, 31, the proviso to section 32, sections 42, 45, 48 to 50, 60 to 63, 66 to 69, 73, 77 and 79 to 90, 92, 97 and 102, the 1847 Act is incorporated in this Order subject to the modifications stated in paragraphs (2) and (3).

(2) In construing the 1847 Act as so incorporated—

- (a) the expression “the special Act” means this Order;
- (b) the expressions “the Promoters of the undertaking” and “the undertakers” mean the *[insert relevant body]*;
- (c) the expression “the harbour, dock or pier” means the authorised project within the area of jurisdiction;
- (d) the expressions “limits” and “prescribed limits” mean the area of jurisdiction;
- (e) the expression “near the pier” does not extend beyond the area of jurisdiction;
- (f) the expression “the harbour master”, in relation to the authorised project, means the *[insert relevant body]*.;
- (g) the definition of “vessel” in article 1(1) shall be substituted for the definition in section 3 of the 1847 Act;

- (h) section 53 of the 1847 Act shall not be construed as requiring the harbourmaster to serve written notice on the master of a vessel and directions given under that section may be communicated to the master of a vessel orally or otherwise; and
- (i) any requirement to comply with a notice or direction given by the harbour master shall be construed as including a requirement that, in complying with such notice or direction, a person who is subject to the notice or direction shall also comply with any relevant notice or direction given by the *[insert relevant authority]* or the harbour master in the exercise by either or both of them of any function conferred by or under any enactment (including this Order).

Principal powers

Development consent etc. granted by the Order

3. Subject to the provisions of this Order and to the requirements in the Schedule (requirements) attached to this Order the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

Period for completion of work

4. If the work is not completed within *[five or such other period as specified]* years from the coming into force of this Order or such extended time as the decision-maker may on the application of the undertaker allow, then on the expiration of that period or such extended time (as the case may be) the rights by this Order granted to the undertaker for making and maintaining the works shall cease except as to so much thereof as is then substantially commenced.

Limits of harbour

5.—(1) The limits of the harbour within which the undertaker shall exercise jurisdiction shall be the area described in Schedule K to this Order and shown, for the purpose of identification only, [...]; and in the following provisions of this Order, references to the limits of the harbour shall be construed as references to the limits so described.

(2) Any references to the limits of the harbour contained in the *[insert name of Acts]* Acts and Orders or in any byelaws, orders or regulations made under those Acts or Orders, shall be construed as references to the limits described in Schedule L to this Order.

(3) *[any necessary revocations]*.

Maintenance of authorised project

6. The undertaker may at any time maintain the authorised project and within the limits of the harbour, from time to time alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

Subsidiary works

7.—(1) The undertaker may from time to time within the Order limits provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or

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

convenient for the construction of the work or the operation of the undertaking, and for this purpose the undertaker may construct and maintain roads, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without prejudice to paragraph (1), the undertaker may within the Order limits carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the work including—

- (a) works for the accommodation or convenience of vessels (including dolphins and pontoons); and
- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.

(3) Article 3 of, and Parts *[specify any required provisions in respect of permitted development right]* 11 and 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995(10) shall apply as if this Order were a grant of planning permission.

Benefit of Order

8. Subject to article 9 (consent to transfer benefit of Order), the provisions of articles [] and [] *[specify relevant articles]* shall have effect solely for the benefit of *[specify person, body or class of person]*.

[NOTE: This article is required where provisions of the Order are specific to a named undertaker or class of undertaker (see section 156(2)(benefit of order granting development consent) of the 2008 Act).]

Consent to transfer benefit of Order

9.—(1) The undertaker may, with the consent of the *[specify person or body]*—

- (a) 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), shall 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) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Streets

Street works

10.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule B (streets subject to street works) as is within the Order limits and may—

(10) S.I. 1995/418. Relevant amendments were made by SI 1999/293, 1999/1783 and 2003/956. There are other amendments not relevant to this Order.

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

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

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

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

[NOTE: This article should not be used for the purposes of authorising street works that affect a trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets subject to street works). For any street works affecting a trunk road the undertaker should make an application for a licence under section 50 of the 1991 Act.]

Stopping up of streets

11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule C (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

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

(4) The condition referred to in paragraph (3) 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.

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

- (a) all rights of way over or along the street so stopped up shall be extinguished; and

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

- (b) the undertaker may appropriate and use for the purposes of the authorised project so much of the site of the street as is bounded on both sides by land owned by the undertaker.
- (6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (7) This article is subject to article 42 (apparatus etc. of statutory undertakers).

Temporary stopping up of streets

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

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.

(4) The undertaker shall not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

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

Access to works

13. The undertaker may, for the purposes of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule E (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

Agreements with street authorities

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

- (a) the construction of any new street including any structure carrying the street over or under a [insert description of development] authorised by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a [insert description of development];
- (c) any stopping up, alteration or diversion of a street authorised by this Order; or
- (d) the carrying out in the street of any of the works referred to in article 10(1) (street works).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

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

Public rights of way

15.—(1) With effect from the [date of publication of this Order] [the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan], [the section of] the public right of way (being a [*insert one of: footpath/bridleway/byway open to all traffic/restricted byway*]) shown marked in [red] between the points [A] and [B] on the rights plan is extinguished.

(2) With effect from [that same date] [*insert later date*] an alternative section of [*insert description of right of way of that same type*] as marked in [green] between the points [C] and [D] on the rights plan is created.

(3) In this article—

“implementation plan” means the written plan agreed between the undertaker and the local highway authority for creation of the agreed alternative right of way to the defined standard; and

“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.

Supplemental powers

Discharge of water

16.—(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 project 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 pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991⁽¹¹⁾ (right to communicate with public sewers).

(3) The undertaker shall 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 shall not be unreasonably withheld.

(4) The undertaker shall 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 shall not be unreasonably withheld; and

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

(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

⁽¹¹⁾ 1991 c.56. Section 106 was amended by the Water Act 2003 (c.37), sections 36(2) and 99. There are other amendments to section 106 which are not relevant to this Order.

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

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991⁽¹²⁾ (offences of polluting water).

(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, a harbour authority within the meaning of section 57 of the Harbours Act 1964⁽¹³⁾, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective work to buildings

17.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits 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 project; or
- (b) after the completion of that part of the authorised project 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 project is first opened for use.

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

(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,

the undertaker shall, 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.

⁽¹²⁾ 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) in Part 1 of Schedule 21 to [S.I. 2007/3538](#).

⁽¹³⁾ 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5).

(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 57 (arbitration).

(7) The undertaker shall 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 project 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 project,

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

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

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

(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 project; 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 project.

Authority to survey and investigate the land

18.—(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 project and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality 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 prejudice to the generality 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) shall, if so required, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

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

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

but such consent shall not be unreasonably withheld.

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

Removal of human remains

19.—(1) In this article “the specified land” means *[insert description of the land]*.

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

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

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

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker shall send a copy of the notice to *[insert relevant local authority]*.

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

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

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

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

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

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

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

(d) it is determined that the remains to which any such notice relates cannot be identified,

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

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

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

- (a) a certificate of reinterment or cremation shall be sent by the undertaker to the Registrar General by the undertaker giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to *[insert relevant local authority]* mentioned in paragraph (4).

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

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

(14) Section 25 of the Burial Act 1857⁽¹⁴⁾ (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.

Right to dredge

20.—(1) The undertaker may, for the purposes of constructing and maintaining the work and of affording access to the work by vessels, from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the river as adjoin or are near to the work and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995) from time to time dredged by them.

(2) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by *[insert relevant body]*.

(3) *[if applicable]* The undertaker shall consult with *[name of separate conservancy port authority]* before exercising the rights conferred on them by this article.

Tidal works not to be executed without approval of Secretary of State

21.—(1) Unless its construction has commenced within five years *[or such other period as is prescribed or specified in the Order]* of the coming into force of this Order, no tidal work shall be constructed, reconstructed, extended, enlarged, replaced or relaid except in accordance with

(14) 1857 c. 81. There are amendments to this Act which are not relevant to this Order.

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

plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before that work is begun.

(2) Any request for the approval of the Secretary of State under paragraph (1) shall be accompanied by written evidence to demonstrate to the satisfaction of the Secretary of State that Schedule L(protective provisions) has been complied with as respects the tidal work for which approval is being requested.

(3) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that paragraph—

(a) the Secretary of State may by notice in writing require the undertaker at their own expense to remove the tidal work or any part of it and restore the site to its former condition; and, if on the expiration of 30 days beginning with the date when the notice is served on the undertaker they have failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; or

(b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker.

Abatement of works abandoned or decayed

22.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker.

Survey of tidal works

23. If the Secretary of State considers it expedient to do so, the Secretary of State may order a survey and examination of a tidal work or of the site on which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the undertaker.

Lights on tidal works etc. during construction

24. The undertaker shall at or near—

(a) a tidal work, including any temporary work; or

- (b) any plant, equipment or other obstruction placed, in connection with any authorised development or any work authorised by article 7 (subsidiary works), within the area of seaward construction activity,

during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State *[and the conservancy authority if applicable or, failing agreement between them, the Secretary of State]* may from time to time direct.

Provision against danger to navigation

25. In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker shall as soon as reasonably practicable notify *[separate conservancy authority if applicable and]* Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House *[and the conservancy authority or, failing agreement between them, the conservancy authority]* may from time to time direct.

Permanent lights on tidal works

26. After the completion of a tidal work the undertaker shall at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as *[the separate conservancy authority if applicable and]* Trinity House *[or, failing agreement between them, the conservancy authority]* may from time to time direct.

Rights to lease etc.

27.—(1) The undertaker may at any time lease or grant for the purposes of the undertaking the use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings, equipment or other property forming part of the undertaking for such period or periods and on such terms and conditions as may be agreed between the undertaker and the persons taking the same.

(2) A lease or grant made or given under paragraph (1) may include provisions delegating to the lessee or grantee any of the functions of the undertaker other than those specified in sub-paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964⁽¹⁵⁾.

Powers of acquisition

Compulsory acquisition of land

28.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project *[or to facilitate, or is incidental, to it][or is required as replacement land]*.

(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

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

(4) This article is subject to article 35 (acquisition of land limited to subsoil lying more than 9 metres beneath surface) and article 38 (temporary use of land for carrying out the authorised project).

⁽¹⁵⁾ 1964 c.40. Paragraph 9B was inserted by section 63 of, and paragraph 9 of Schedule 3 to, the Transport and Works Act 1992 (c.42).

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

Compulsory acquisition of land – incorporation of the mineral code

29. [Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981⁽¹⁶⁾(minerals) [is/are] incorporated in this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”;
- (c) *[insert additional modifications]*.

Time limit for exercise of authority to acquire land compulsorily

30.—(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 shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 33 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)⁽¹⁷⁾.

(2) The authority conferred by article 38 (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent 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

31.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the *[insert name]* plan.

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act as substituted by article 36 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

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

Private rights of way

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

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

whichever is the earliest.

⁽¹⁶⁾ 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.

⁽¹⁷⁾ 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

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

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 41 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of 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 shall not apply to any right of way specified in the notice; and

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

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right of way 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 shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

33.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽¹⁸⁾ shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

⁽¹⁸⁾ 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

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

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall 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.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(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..”.

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

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

34.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in article 28(1) (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) shall not prevent article 36 (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 land limited to subsoil lying more than 9 metres beneath surface

35.—(1) This article applies to the land specified in Schedule F (land of which only subsoil more than 9 metres beneath surface may be acquired).

(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 28 (compulsory acquisition of land) so much of, or such rights in, the subsoil of the land as may be required for the purposes of the authorised project.

(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, the undertaker shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose “level of the surface of the land” means—

- (a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;
- (b) in the case of a watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or
- (c) in any other case, ground surface level.

Acquisition of part of certain properties

36.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 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 which states 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 shall be required to 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 shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, 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 the notice to treat consists 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 shall be required to 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 the notice to treat consists 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 shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines 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,

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

the notice to treat shall be 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 determines 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 shall be 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, shall 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 shall 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

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

(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) shall 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 appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) 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 project

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

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule G (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 project specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

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

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule G.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall 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, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, 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) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 31 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 34 (acquisition of subsoil only) or in accordance with article 35 (acquisition of land limited to subsoil lying more than 9 metres beneath surface).

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

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

Temporary use of land for maintaining authorised project

39.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; and

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

- (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) shall 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 on and taking temporary possession of land under this article the undertaker shall 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 project 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 shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (7) Any dispute as to a person’s entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, 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 shall not be required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).
- (11) In this article “the maintenance period”, in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project is first opened for use.

Special category land

40.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and *[insert name of relevant body]* has certified that a scheme for the provision of the replacement land as *[common/open space/fuel or field garden allotment]* has been implemented to its satisfaction.

(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in *[insert name of relevant body]* subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

“the special category land” means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled “Special Category Land Plan” attached to the land plan, which may be acquired compulsorily under this Order and for which replacement land is to be provided; and

“the replacement land” means the land identified in the book of reference and on the plan entitled “Replacement Land Plan” attached to the land plan.

Statutory undertakers

41. The undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the *[insert name]* plan within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference.

Apparatus and rights of statutory undertakers in stopped up streets

42.—(1) Where a street is stopped up under article 11 (stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street shall have 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 11 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 shall—

- (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 shall 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) shall 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 shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

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

(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 shall 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)) shall, 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) shall not apply where the authorised project 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 shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and

(b) the allowable costs shall 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⁽¹⁹⁾.

Recovery of costs of new connections

43.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 41 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be 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) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 41, 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,

shall be 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 shall not have effect in relation to apparatus to which article 42 (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) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

⁽¹⁹⁾ 2003 c.21. There are amendments to this Act which are not relevant to this Order.

Miscellaneous and general

Deemed consent under section 34 of the Coast Protection Act 1949

44. The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949(20) to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.

Deemed licence under Part 2 of the Food and Environment Protection Act 1985

45. The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985(21) to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.

Felling or lopping of trees

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

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to passengers or other persons using the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall 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, shall be determined under Part 1 of the 1961 Act.

Trees subject to tree preservation orders

47.—(1) The undertaker may fell or lop any tree described in Schedule J and identified on the *[insert name]* plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to passengers or other persons using the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

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

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

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

(20) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other amendments to the 1949 Act which are not relevant to this Order.

(21) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this Order.

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

Railway and navigation undertakings

48.—(1) Subject to the following provisions of this article, the undertaker may not under article 10 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

Application of landlord and tenant law

49.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project 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 project, 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 shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

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

Defence to proceedings in respect of statutory nuisance

51.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(22) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) 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 project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(23); or
 - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25; or
 - (ii) is a consequence of the use of the authorised project 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 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall 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 project.

Protection of interests

52. Schedule L to this Order has effect.

Saving for Trinity House

53. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Disapplication of regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994

54.—(1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994(24) (general development orders) (“the Habitats Regulations”) shall not apply to any planning

(22) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(23) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the [Environmental Protection Act 1990, c.25](#). There are other amendments to the 1974 Act which are not relevant to this Order.

(24) 1994/2716 (“the Habitats Regulations”). Relevant amendments were made by [SI 2007/1843](#), [SSI 2007/80](#), and [SSI 2007/349](#). The Habitats Regulations make provision for the purpose of implementing, for Great Britain, Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild flora and fauna (OJNo. L 206, 22.07.92, p.7) as last amended by Council Directive [2006/105/EC](#) of 20 November 2006 adapting Directives [79/409/EEC](#), [92/43/EEC](#), [97/68/EC](#), [2001/80/EC](#) and [2001/81/EC](#) in the field of environment, by reason of the accession of Bulgaria and Romania (OJ No. L 363, 20.12.06, p.368).

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

permission which relates to the works authorised by article 7 (subsidiary works) and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995 for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

- (2) Paragraph (1) does not apply if and to the extent that those works—
- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 of the Habitats Regulations (assessment of implications for European Site) in connection with the making of this Order; and
 - (b) are not the subject of a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

Planning, etc. jurisdiction

55.—(1) During the period beginning with the date when this Order comes into force and beginning on the accretion date, the area within the Order limits shall, for the purposes of the Control of Pollution Act 1974⁽²⁵⁾ and the Town and Country Planning Act 1990⁽²⁶⁾, be annexed to and incorporated with the district of *[insert name of relevant planning authority]*.

(2) In this article “accretion date” means the date when the works authorised by this Order have been completed or, if earlier, the date when the benefits and rights granted by this Order cease to have effect pursuant to article 4 (period for completion of work).

Certification of plans etc

56.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the book of reference;
- (b) the land plan;
- (c) the rights plan;
- (d) the works plan;
- (e) the sections; and
- (f) any other plans or documents referred to in this Order,

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

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

Arbitration

57. Any difference under any provision of this Order, unless otherwise provided for, shall 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 *[insert appropriate body]*.

(25) 1974 c.40.

(26) 1990 c.8.

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

Schedule A

AUTHORISED PROJECT

Part 1

AUTHORISED DEVELOPMENT

[NOTE: This Part should describe as fully as possible the elements of the proposed project (including any associated development), which are development for the purposes of section 32 of the 2008 Act, for which development consent is sought. It should not include any elements of development which would be authorised by specific provisions in the Order.]

Part 2

ANCILLARY WORKS

[NOTE: This Part should describe as fully as possible the ancillary works for which consent is sought and which are not development within the meaning of section 32 of the 2008 Act and which are not be the subject of a separate provision [article] in this Order.]

Schedule B

STREETS SUBJECT TO STREET WORKS

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Street subject to street works</i>

Schedule C

STREETS TO BE STOPPED UP

Part 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>	<i>New street to be substituted</i>

Part 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>

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

Schedule D

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be temporarily stopped up</i>	<i>Extent of temporary stopping up</i>

Schedule E

ACCESS TO WORKS

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Description of access</i>

Schedule F

LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE MAY BE ACQUIRED

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Number of and shown on land plan</i>

Schedule G

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

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

Schedule H

DEEMED CONSENT UNDER COAST PROTECTION ACT 1949

[Insert details of deemed consent]

Schedule I

DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION ACT 1985

[Insert details of deemed licence]

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

Schedule J

TREES SUBJECT TO TREE PRESERVATION ORDERS

(1)	(2)	(3)
Type of tree	Number[reference] of tree	Work to be carried out shown on land plan

Schedule K

LIMITS OF HARBOUR

[Insert details of limits of harbour]

Schedule L

PROTECTIVE PROVISIONS

[Insert details of protective provisions]