
STATUTORY INSTRUMENTS

2023 No. 834

The A303 (Amesbury to Berwick Down)
Development Consent Order 2023

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the A303 (Amesbury to Berwick Down) Development Consent Order 2023 and comes into force on 4th August 2023.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1980 Act” means the Highways Act 1980(3);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);

“the 1984 Act” means the Road Traffic Regulation Act 1984(5);

“the 1990 Act” means the Town and Country Planning Act 1990(6);

“the 1991 Act” means the New Roads and Street Works Act 1991(7);

“the 2008 Act” means the Planning Act 2008(8);

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

“affected person” has the same meaning as in section 59(9) (notice of persons interested in land which compulsory acquisition request relates) the 2008 Act;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

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

(1) 1961 c. 33.

(2) 1965 c. 56.

(3) 1980 c. 66.

(4) 1981 c. 66.

(5) 1984 c. 27.

(6) 1990 c. 8.

(7) 1991 c. 22.

(8) 2008 c. 29.

(9) Section 69 was amended by section 240(2) of, and paragraph 16 of Schedule 13 to the Localism Act 2011 (c. 20).

“authorised person” means—

- (a) a person acting in the course of that person’s duties who—
 - (i) is an employee, agent, contractor or sub-contractor of the undertaker; or
 - (ii) is authorised by the undertaker to exercise one or more of its functions under this Order; or
- (b) a constable, Police Community Support Officer, an officer of the Driver and Vehicle Standards Agency, an officer of the Health and Safety Executive, a person authorised for the purposes of section 44 (powers of fire-fighters etc. in an emergency etc.) of the Fire and Rescue Services Act 2004⁽¹⁰⁾, a person accredited by or under section 41 (accreditation under community safety accreditation schemes) of the Police Reform Act 2002⁽¹¹⁾, a traffic officer, acting in the execution of that person’s duties within the tunnel;

“book of reference” means the document listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“byway open to all traffic” has the same meaning as in section 66(1) (interpretation of Part 3) of the Wildlife and Countryside Act 1981⁽¹²⁾;

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

“classification of roads plan” means the plan listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the classification of roads plan for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 56(4)⁽¹³⁾ (time when development begun) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works, ecological surveys and mitigation works, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt of construction plant and equipment, erection of construction plant and equipment for the preliminary works, diversion and laying of underground apparatus and site clearance, and the temporary display of site notices or information, and “commencement” is to be construed accordingly;

“construct” includes execute, place, alter, replace, relay and remove and “construction” is to be construed accordingly;

“Convention” means the Convention Concerning the Protection of the World Cultural and Natural Heritage 1972⁽¹⁴⁾, which was ratified by the United Kingdom as a State Party on 29 May 1984;

“cycleway” means a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988⁽¹⁵⁾) with a right of way on foot and a right of way on horseback or leading a horse;

⁽¹⁰⁾ 2004 c. 21. Section 44 was amended by section 6 of the Emergency Workers (Obstruction) Act 2006 (c. 39).

⁽¹¹⁾ 2002 c. 30. Section 41 was amended by section 52 of, and paragraph 42 of Schedule 14 to, the Police and Justice Act 2006 (c. 48).

⁽¹²⁾ 1981 c. 69.

⁽¹³⁾ Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34).

⁽¹⁴⁾ The Convention was adopted by the General Conference at its seventeenth session, Paris, 16 November 1972.

⁽¹⁵⁾ 1988 c. 52.

“Crown land plans” means the plans listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the Crown land plans for the purposes of this Order;

“de-trunking plans” means the plans listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the de-trunking plans for the purposes of this Order;

“ecological mitigation works” include bat roost and badger sett closures and provision of hibernacula;

“electronic transmission” means a communication transmitted—

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

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

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the Communications Act 2003⁽¹⁶⁾;

“engineering section drawings (cross sections)” means the drawings listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the engineering section drawings (cross sections) for the purposes of this Order;

“engineering section drawings (plan and profiles)” means the drawings listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the engineering section drawings (plan and profiles) for the purposes of this Order;

“environmental statement” means the document listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the environmental statement for the purposes of this Order;

“Esso” means Esso Petroleum Company, Limited (company number 00026538) whose registered office is at Ermyn House, Ermyn Way, Leatherhead, Surrey, KT22 8UX, and any successor in title;

“flood risk activity” has the same meaning as in regulation 2 (interpretation: general) of the Environmental Permitting (England and Wales) Regulations 2016⁽¹⁷⁾;

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

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

“Historic England” means the Historic Buildings and Monuments Commission for England established under the National Heritage Act 1983⁽¹⁸⁾, the functions of which include acting as a statutory consultee and advising the government on the historic environment, including advice to the Department for Digital, Culture, Media and Sport which acts on behalf of government as state party to the Convention;

“land plans” means the plans listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 7 (limits of deviation);

“maintain” includes inspect (including recording the results of the inspection), repair, adjust, alter, remove or reconstruct, provided such works do not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement, and any derivative of “maintain” is to be construed accordingly;

⁽¹⁶⁾ 2003 c. 21. Section 32(1) was amended by S.I. 2011/1210.

⁽¹⁷⁾ S.I. 2016/1154.

⁽¹⁸⁾ 1983 c. 47.

“Order land” means the land shown coloured pink, the land shown hatched pink, the land shown coloured blue and the land shown coloured grey on the land plans, and which is described in the book of reference;

“Order limits” means the limits of land to be acquired permanently or used temporarily as shown on the land plans, and the limits of land within which the authorised development, as shown on the works plans, may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(19);

“planning authority” means Wiltshire Council;

“preliminary works” means—

- (a) archaeological investigation and archaeological mitigation works;
- (b) ecological mitigation works;
- (c) investigations for the purpose of assessing ground conditions;
- (d) remedial work in respect of any contamination or other adverse ground conditions;
- (e) erection of any temporary means of enclosure;
- (f) diversion and laying of underground apparatus;
- (g) site clearance;
- (h) Work No. 1H(viii) to (xiv) inclusive;
- (i) Work No. 5; and
- (j) Work No. 7;

“restricted byway” has the same meaning as in Part 2 (public rights of way and road traffic) of the Countryside and Rights of Way Act 2000(20);

“rights of way and access plans” means the plans listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the rights of way and access plans for the purposes of this Order;

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

“shared use cycle track” means a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988) and a right of way on foot;

“Southern Electric Power Distribution plc” means the company of that name (company number 04094290) whose registered office is at No.1 Forbury Place, 43 Forbury Road, Reading, United Kingdom, RG1 3JH);

“special category land plans” means the plans listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the special category land plans for the purposes of this Order;

“special road” means a highway which is a special road in accordance with section 16(21) (general provisions as to special roads) of the 1980 Act or by virtue of an order granting development consent;

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

(19) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(20) 2000 c. 37.

(21) Section 16 was amended by section 36 of, and paragraph 24 of Schedule 2 to the 2008 Act and section 57(1) of, and paragraph 13(2) to (4) of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

“street” means a street within the meaning of section 48(22) (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“traffic authority” has the same meaning as in section 121A(23) (traffic authorities) of the 1984 Act;

“traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004(24);

“traffic regulation measures plans (clearways and prohibitions)” means the plans listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the traffic regulation measures plans (clearways and prohibitions) for the purposes of this Order;

“traffic regulation measures plans (speed limits)” means the plans listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the traffic regulation measures plans (speed limits) for the purposes of this Order;

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

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

- (a) section 10(25) (general provision as to trunk roads) or 19(1)(26) (provisions as to trunk roads) of the 1980 Act;
- (b) an order made or direction given under section 10 of that Act;
- (c) an order granting development consent; or
- (d) any other enactment;

“tunnel” means the road tunnel to be constructed as part of Work No. 1 and as shown by a solid blue line on the tunnel area plan;

“tunnel approaches” means the western and eastern approaches to the tunnel, the linear extent of which is shown by dashed blue lines on the tunnel area plan;

“tunnel area” means the extent of the public highway to be comprised in and along the tunnel and the tunnel approaches;

“tunnel area plan” means the plan listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the tunnel area plan for the purposes of this Order;

“tunnel limits of deviation plan” means the plan listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the tunnel limits of deviation plan for the purposes of this Order;

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

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

“works plans” means the plans listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the works plans for the purposes of this Order and

(22) Section 48 was amended by section 124(1) and (2) of the Local Transport Act 2008 (c. 26).

(23) Section 121A was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the 1991 Act. It was amended by section 1(6) of, and paragraphs 70 and 95(2) and (3) of Schedule 1 to, the Infrastructure Act 2015 (c. 7). There are other amendments which are not relevant to this Order.

(24) 2004 c. 18.

(25) Section 10 was amended by section 22(2) of the 1991 Act, by section 36 of, and paragraph 22 of Schedule 2 to, the 2008 Act and by section 1(6) of, and paragraph 10 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(26) Section 19(1) was amended by section 1(6) of, and paragraph 15 of Schedule 1 to, the Infrastructure Act 2015.

“World Heritage Site” means the Stonehenge part of the Stonehenge, Avebury and Associated Sites World Heritage Site as inscribed by the United Nations Educational, Scientific and Cultural Organization pursuant to the Convention.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) References in this Order to the creation and acquisition of rights over land include references to rights to oblige a party having an interest in land to grant those rights referenced in the Order, at the direction of the undertaker, either—

(a) to an affected person directly, where that affected person’s land or rights over land have been adversely affected by this Order, and, where that is the case, the rights referenced in the Order are to be granted for the benefit of the land in which that affected person has an interest at the time of the making of this Order; or

(b) to any statutory undertaker for the purposes of their undertaking.

(4) Subject to the provisions of this Order, all distances, directions, areas and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

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

(6) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the plan to which the reference relates.

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

Disapplication of legislative provisions

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

(a) section 28E (duties in relation to sites of scientific interest) of the Wildlife and Countryside Act 1981⁽²⁷⁾;

(b) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991⁽²⁸⁾;

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

(d) the provisions of any byelaws made under section 66⁽²⁹⁾ (powers to make byelaws) of the Land Drainage Act 1991;

(27) 1981 c. 69. Section 28E was inserted by section 75(1) of, and paragraph 1 of Schedule 9 to, the Countryside and Rights of Way Act 2000 (c. 37). It was amended by section 105(1) of, and paragraph 79 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16). There are other amendments which are not relevant to this Order.

(28) 1991 c. 59. Section 23 was amended by section 120 of, and paragraphs 192(1) and (2) of Schedule 22 to, the Environment Act 1995 (c. 25) and by section 31 of, and paragraph 32 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29). There are other amendments to section 23 which are not relevant to this Order.

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

- (e) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw-making powers of the Appropriate Authority) to the Water Resources Act 1991⁽³⁰⁾;
 - (f) regulation 12 (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016⁽³¹⁾ in respect of a flood risk activity only;
 - (g) the provisions of the Neighbourhood Planning Act 2017⁽³²⁾ in so far as they relate to temporary possession of land under articles 29 (temporary use of land for constructing the authorised development) and 30 (temporary use of land for maintaining the authorised development) of this Order; and
 - (h) section 33(1)(f) (effect of requirement for development consent on other consent regimes) of the 2008 Act in so far as it relates to any work or operation authorised to be carried out outside of the Order limits under articles 14 (protective works to buildings) or 15 (authority to survey and investigate land) of this Order.
- (2) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of “development”) of the Community Infrastructure Levy Regulations 2010⁽³³⁾ any building comprised in the authorised development is deemed to be—
- (a) a building into which people do not normally go; or
 - (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

PART 2

WORKS PROVISIONS

Principal Powers

Development consent, etc. granted by the Order

4.—(1) Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of the authorised development

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

Planning permission

6.—(1) Subject to paragraph (3), if planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is not—

⁽³⁰⁾ 1991 c. 57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84(2) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraph 49 of Schedule 2 to the Flood and Water Management Act 2010 and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 and section 224 of, and paragraph 24 of Schedule 16 and Part 5 of Schedule 22 to, the Marine and Coastal Access Act 2009. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

⁽³¹⁾ S.I. 2016/1154, amended by S.I. 2018/110.

⁽³²⁾ 2017 c. 20.

⁽³³⁾ S.I. 2010/948, amended by S.I. 2011/987.

- (a) itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the development authorised by this Order,

then the construction, maintenance, use or operation of that development under the terms of the planning permission does not constitute a breach of the terms of this Order.

(2) Except as expressly provided, nothing in this Order is to prejudice the operation of, and the powers and duties of the undertaker under, the 1980 Act, the 1991 Act and the Town and Country Planning (General Permitted Development) (England) Order 2015(34).

(3) Within the World Heritage Site, the undertaker may not rely on planning permission granted by class B of Part 9 (development relating to roads) of Schedule 2 (permitted development rights) of the Town and Country Planning (General Permitted Development) (England) Order 2015 for any part of the authorised development.

Limits of deviation

7.—(1) The following provisions of this article have effect subject to the requirement that the undertaker must, save for any works or operations authorised under articles 14 (protective works to buildings) or 15 (authority to survey and investigate land), construct the authorised development within the Order limits.

(2) In constructing and maintaining the non-linear works comprised in the authorised development, the undertaker may deviate laterally within the limits of deviation for those works shown on the works plans, to the extent the undertaker considers necessary.

(3) In constructing or maintaining the linear works comprised in the authorised development the undertaker may deviate laterally from the lines or situations shown on the works plans to the extent of the Order limits, so far as the undertaker considers to be necessary, save that—

- (a) in constructing or maintaining any linear work, other than Work No. 1F, in deviating laterally from the centrelines shown on the works plans, the situation of the centreline may be varied up to a maximum of 3 metres either side of the centreline of that work as shown on the works plans;
- (b) in constructing or maintaining Work No. 1F, the undertaker may deviate laterally within the Order limits so far as the undertaker considers to be necessary, and the lateral limits of deviation provided for in sub-paragraph (a) does not apply; and
- (c) in constructing or maintaining the authorised development comprised in Work No. 6(a), the undertaker may deviate laterally only within the bounds of the carriageway and verges of the existing A303 (to be de-trunked under this Order).

(4) Except in the case of Work No. 1F, in constructing or maintaining the authorised development, the undertaker may deviate vertically from the levels shown on the engineering section drawings (plan and profiles) and the engineering section drawings (cross sections)—

- (a) to any extent upwards as the undertaker considers to be necessary but not exceeding 0.5 metres, or, in relation to the parts of the authorised development referred to in column (1) of the table below, not exceeding the permitted limit for each such part, set out in the corresponding entry in column (2) of that table; and
- (b) subject to paragraph (5), to any extent downwards as the undertaker considers to be necessary, but not exceeding 1 metre, or, in relation to the parts of the authorised development referred to in column (1) of the table below, not exceeding the permitted limit for each such part, set out in the corresponding entry in column (3) of that table.

<i>(1)</i> <i>Part of authorised development</i>	<i>(2)</i> <i>Upwards vertical limit of deviation</i>	<i>(3)</i> <i>Downwards vertical limit of deviation</i>
Works Nos. 1A and 2	1 metre	1 metre
Work Nos. 1B and 1H	0.5 metres	0.5 metres
Work Nos. 1C, 3A, 3B, 3C, 4, 5 and 7	0.5 metres	1 metre
(1) Work No. 1D, save for (2) the level of the ground above the structure comprised in Work No. 1D(i), which is to be reinstated at existing ground level subject to the limits in columns (2) and (3) which are to apply by reference to existing ground level	(1) 0.5 metres (2) 0.25 metres	(1) 3 metres (2) 0.25 metres
(1) Work No. 1E, save for (2) the level of the ground above the structures comprised in Work No. 1E(i), which is to be reinstated at existing ground level subject to the limits in columns (2) and (3) which are to apply by reference to existing ground level	(1) 0.5 metres (2) 0.25 metres	(1) 4 metres (2) 0.25 metres
(1) Work No. 1G save for (2) the level of the ground above the structures comprised in Work No. 1G(i) and (ii), which is to be reinstated at existing ground level subject to the limits in columns (2) and (3) which are to apply by reference to existing ground level	(1) 0.5 metres (2) 0.25 metres	(1) 3 metres (2) 0.25 metres
Work No. 6	0.25 metres	0.25 metres
Work No. 8	3 metres	3 metres, but not lower than the existing ground levels

(5) In constructing and maintaining the authorised development comprised in Work No. 1F the undertaker may deviate vertically—

- (a) upwards, to the maximum upper limit of deviation for the crown of the tunnel, as shown on the tunnel limits of deviation plan;
- (b) upwards, to the maximum upper limit of deviation for the finished road level shown on the tunnel limits of deviation plan; and

(c) downwards, to a depth not exceeding the level at 36 metres above ordnance datum.

(6) The maximum vertical limits of deviation referred to in paragraphs (4) and (5) do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State certifies accordingly, following consultation with the planning authority and any other person the Secretary of State considers appropriate having regard to the proposed deviation in question and the statutory roles and responsibilities of such person, that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(7) Without limitation on the scope of paragraphs (2) to (6), in constructing or maintaining the authorised development the undertaker may—

- (a) subject to sub-paragraph (b), deviate by up to 3 metres from the points of commencement and termination of any linear works;
- (b) in relation to the points of commencement and termination of the parts of the authorised development referred to in column (1) of the table below, the undertaker may deviate from those points of commencement and termination so far as the undertaker considers it necessary, in a generally westerly direction by the corresponding limit set out in column (2) or in a generally easterly direction by the corresponding limit set out in column (3); and
- (c) in constructing or maintaining Work Nos. 1E, 1F and 1G, deviate from the design of any tunnel or tunnel structure and vary the number of tunnel cross-passages shown on the engineering section drawings (plan and profiles) and the engineering section drawings (cross sections) to the extent that to do so would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

<i>(1)</i> <i>Part of the authorised development</i>	<i>(2)</i> <i>Deviation permitted in a generally westerly direction</i>	<i>(3)</i> <i>Deviation permitted in a generally easterly direction</i>
Point of commencement of Work No. 1E and point of termination of Work No. 1D	200 metres	1 metre
Point of commencement of Work No. 1F and point of termination of Work No. 1E	200 metres	1 metre
Point of commencement of Work No. 1G and point of termination of Work No. 1F	1 metre	30 metres
Point of commencement of Work No. 1H and point of termination of Work No. 1G	1 metre	30 metres

(8) In this article, references to—

- (a) “linear works” are references to any works shown on the works plans by way of a centreline; and
- (b) “non-linear works” are references to any other works shown on the works plans.

(9) Despite the provisions of article 2(4), the distances and lengths referred to in this article are not to be taken as being approximate.

Streets

Application of the 1991 Act

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

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (highway authorities, highways and related works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(35) (dual carriageways and roundabouts) of the 1980 Act or section 184(36) (vehicle crossings over footways and verges) of that Act.

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

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

- section 56(37) (power to give directions as to timing of street works);
- section 56A(38) (power to give directions as to placing of apparatus);
- section 58(39) (restriction on works following substantial road works);
- section 58A(40) (restriction on works following substantial street works);
- section 73A(41) (power to require undertaker to re-surface street);
- section 73B(42) (power to specify timing etc. of re-surfacing);
- section 73C(43) (materials, workmanship and standard of re-surfacing);
- section 78A(44) (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A(45) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 11 (temporary stopping up and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(46) referred to in paragraph (4) are—

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- (35) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the 1991 Act.
 - (36) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the 1991 Act.
 - (37) Section 56 was amended by sections 40 and 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (38) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
 - (39) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the Traffic Management Act 2004.
 - (40) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
 - (41) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
 - (42) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
 - (43) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
 - (44) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
 - (45) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.
 - (46) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.

section 54(47) (advance notice of certain works), subject to paragraph (6);
 section 55(48) (notice of starting date of works), subject to paragraph (6);
 section 57(49) (notice of emergency works);
 section 59(50) (general duty of street authority to co-ordinate works);
 section 60 (general duty of undertakers to co-operate);
 section 68 (facilities to be afforded to street authority);
 section 69 (works likely to affect other apparatus in the street);
 section 75 (inspection fees);
 section 76 (liability for cost of temporary traffic regulation); and
 section 77 (liability for cost of use of alternative route),

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

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

(7) Nothing in article 9 (construction and maintenance of new, altered or diverted streets and other structures)—

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

Construction and maintenance of new, altered or diverted streets and other structures

9.—(1) Subject to paragraphs (6), (7) and (8), any highway (other than a trunk road or special road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing with the local highway authority, the highway, including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(2) Subject to paragraphs (3), (6), (7) and (8), where a highway (other than a trunk road or special road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway, including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(3) Subject to paragraphs (6), (7) and (8), where a footpath or bridleway is altered or diverted under this Order along a vehicular private means of access, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the highway authority and unless otherwise agreed in writing, be maintained (including any culverts or other structures laid under that part of the highway) by and at the expense of the person or persons with the benefit of the vehicular private means of access.

(4) Where a street which is not, and is not intended to be, a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when

(47) Section 54 was amended by section 49(1) of the Traffic Management Act 2004.

(48) Section 55 was amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(49) Section 57 was amended by section 52(3) of the Traffic Management Act 2004.

(50) Section 59 was amended by section 42 of the Traffic Management Act 2004.

completed to the reasonable satisfaction of the street authority, unless otherwise agreed in writing, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

- (5) Subject to paragraphs (6), (7) and (8), where a highway is de-trunked under this Order—
- (a) section 265(51) (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) of the 1980 Act applies in respect of that highway; and
 - (b) any alterations to that highway undertaken under powers conferred by this Order prior to and in connection with that de-trunking must, unless otherwise agreed in writing with the local highway authority, be maintained by and at the expense of the local highway authority from the date of de-trunking.

(6) In the case of any bridge constructed under this Order to carry a highway other than a trunk road or special road over a trunk road or special road, the highway surface must from its completion be maintained by and at the expense of the local highway authority and the structure of the bridge must be maintained by and at the expense of the undertaker.

(7) In the case of any bridge constructed under this Order to carry a highway (other than a trunk road or special road) over another highway which is not a trunk road or a special road, both the highway surface and structure of the bridge must be maintained by and at the expense of the local highway authority from their completion.

(8) In the case of a bridge constructed under this Order to carry a private right of way (whether or not it also carries a footpath or bridleway), the surface of the street and the structure of the bridge must be maintained by and at the expense of the undertaker.

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

(10) For the purposes of a defence under paragraph (9), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

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

(51) Section 265 was amended by section 146 of, and paragraph 45 of Schedule 3 to, the 1984 Act and section 57 of and paragraph 52 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

Permanent stopping up of streets and private means of access

10.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development, stop up each of the streets and private means of access shown on the rights of way and access plans and specified in columns (1) and (2) of Parts 1, 2, 3 and 4 of Schedule 3 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) to the extent specified and described in column (3) of those Parts of that Schedule.

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

- (a) the new street or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts 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 or private means of access 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 or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in columns (1) and (2) of Parts 2 and 4 of Schedule 3 (being a street or private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all of the land which abuts on either side of the street or private means of access 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 or private means of access concerned; or
- (c) there is a reasonably convenient access to the land otherwise than from the street or private means of access concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

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

- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access 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 is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

Temporary stopping up and restriction of use of streets

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

- (a) divert the traffic from the street; and
 - (b) subject to paragraph (3), prevent all persons from passing along the street.
- (2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article and within the Order limits as a temporary working site.
- (3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.
- (4) The undertaker must not temporarily stop up, alter, divert or restrict the use of any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent, but its consent must not be unreasonably withheld or delayed.
- (5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Access to works

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

Supplemental Powers

Discharge of water

- 13.—**(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse, public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.
- (2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991⁽⁵²⁾.
- (3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose.
- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (6) Nothing in this article overrides the requirement for an environmental permit under regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016⁽⁵³⁾.

⁽⁵²⁾ 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and section 32 of, and paragraph 16(1) of Schedule 3 to, the Flood and Water Management Act 2010 (c. 29).

⁽⁵³⁾ S.I. 2016/1154, amended by S.I. 2018/110.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(54), have the same meanings as in that Act.

Protective works to buildings

14.—(1) Subject to the following provisions of this article, the undertaker may at the undertaker’s own expense carry out such protective works to any building lying within the Order limits or which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

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

(3) Subject to paragraph (5), 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 to a building under this article 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 (whether or not such adjacent land is inside or outside the Order limits) but not any building erected on it,

and if it is reasonably required, the undertaker may take possession, or exclusive possession, of the building and any land or part thereof for the purpose of carrying out the protective works.

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

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(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 of 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).

(54) 1991 c. 57.

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

(8) Where—

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

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

(9) Subject to article 37 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 152(55) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Section 13(56) (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125(57) (application of compulsory acquisition provisions) of the 2008 Act.

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

(12) 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 construction, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate land

15.—(1) The undertaker may for the purposes of the construction, operation or maintenance of the authorised development enter on—

- (a) any land shown within the Order limits; and
- (b) where reasonably necessary, any land which is adjacent to, but outside the Order limits,

and—

- (i) survey or investigate the land (including any watercourses, groundwater, static water bodies or vegetation on the land);
- (ii) without limitation on the scope of sub-paragraph (i), make any excavations or trial holes and boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and water samples and discharge water from sampling operations on to the land;

(55) Section 152 was amended by [S.I. 2009/1307](#).

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

(57) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

- (iii) without limitation on the scope of sub-paragraph (i), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
 - (iv) 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 and boreholes.
- (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) The notice required under paragraph (2) must indicate the nature of the survey or investigation that the undertaker intends to carry out.
- (4) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required, before or after entering the land, produce written evidence of authority to do so; and
 - (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes and boreholes.
- (5) No trial holes or boreholes are to be made under this article—
- (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.
- (6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Removal of human remains

16.—(1) In this article—

“the burial authority” means the burial authority for the specified land, being Wiltshire Council; and

“the specified land” means any land within the Order limits.

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

(3) Subject to paragraph (12), before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

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

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

(5) At any time within 56 days after the first publication of a notice under paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred

in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

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

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

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

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

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land;
- (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;
- (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 must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

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

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

- (a) a certificate of re-interment or cremation must be sent to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the burial authority.

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

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

- (13) In the case of remains in relation to which paragraph (12) applies, the undertaker—
- (a) may remove the remains;
 - (b) must apply for direction from the Secretary of State under paragraph (15) as to their subsequent treatment; and
 - (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) In this article—

- (a) references to a relative of the deceased are to a person who—
 - (i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
 - (ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased.
- (b) references to a personal representative of the deceased are to a person or persons who—
 - (i) is the lawful executor of the estate of the deceased; or
 - (ii) is the lawful administrator of the estate of the deceased.

(15) The removal and subsequent treatment of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

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

(17) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(58) is not apply to a removal carried out in accordance with this article.

(18) Section 239 (use and development of burial grounds) of the 1990 Act applies—

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 29 (temporary use of land for constructing the authorised development) or 30 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order,

and in section 240(1) (provisions supplemental to ss.238 and 239) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (16) of this article and in section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment“ includes this Order.

(19) The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950(59) do not apply to the authorised development.

Felling or lopping of trees and hedgerows

17.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

(58) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1).
 (59) S.I. 1950/792.

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

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

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

(4) The undertaker may, for the purposes of constructing, maintaining or operating the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article "hedgerow" includes a hedgerow to which the Hedgerow Regulations 1997⁽⁶⁰⁾ apply and includes important hedgerows.

Maintenance of drainage works

18.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article "drainage" has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991⁽⁶¹⁾.

PART 3

POWERS OF ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Compulsory acquisition of land

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

(2) This article is subject to article 22 (compulsory acquisition of rights), article 27 (acquisition of subsoil, etc., only) and article 29(8) (temporary use of land for constructing the authorised development).

Compulsory acquisition of land – incorporation of the minerals code

20. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981⁽⁶²⁾ are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for "the acquiring authority" substitute "the undertaker".

⁽⁶⁰⁾ S.I. 1997/1160.

⁽⁶¹⁾ 1991 c. 59. The definition was substituted by section 100(2) of the Environment Act 1995 (c. 25).

⁽⁶²⁾ 1981 c. 67.

Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily

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

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act as modified by article 25 (modification of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act),

in relation to any part of the Order land.

(2) The authority conferred by article 29 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

22.—(1) Subject to the following paragraphs of this article, the undertaker may acquire such rights over the Order land or impose such restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) The powers of paragraph (1) may be exercised by a statutory undertaker or by an owner or occupier of land identified in column (4) of the table in Part 3 of Schedule 3 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) to this Order, instead of by the undertaker in any case where the undertaker has given its prior consent to that in writing, and that consent may be given subject to terms and conditions.

(3) Where in consequence of paragraph (2), a statutory undertaker or an owner or occupier of land exercises the powers in paragraph (1) in place of the undertaker, except in relation to the payment of compensation the liability for which must remain with the undertaker, the statutory undertaker or the owner or occupier of land, as the case may be, is to be treated for the purposes of this Order, and by any person with an interest in the land affected, as being the undertaker in relation to the acquisition of the rights and the imposition of the restrictive covenants in question.

(4) In the case of the Order land specified in columns (1) and (2) of Schedule 4 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition under paragraph (1) are limited to the acquisition of such wayleaves, easements, new rights over the land or the imposition of such restrictive covenants as the undertaker may require for or in connection with the authorised development for the purposes specified in column (3) of Schedule 4 in relation to that land.

(5) The power under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Schedule 4 for the benefit of statutory undertakers or for the benefit of any other person—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 4 as may be required for the benefit of any other statutory undertaker or any other person; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 4 as are required for the benefit of any other statutory undertaker or any other person.

(6) Subject to section 8(63) (other provisions as to divided land) of, and Schedule 2A(64) (counter-notice requiring purchase of land not in notice to treat) to, the 1965 Act (as substituted by paragraph 5(8) of Schedule 5 (modification of compensation and compulsory purchase enactments for the creation of new rights)), where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(7) Schedule 5 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(8) For the purposes of this article “statutory undertaker” includes Esso.

Private rights over land

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

- (a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the undertaker under section 11(1)(65) (powers of entry) of the 1965 Act,

whichever is the earlier.

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

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act, or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earlier.

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right or by the imposition of any restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152(66) (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138(67) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 31 (statutory undertakers) applies.

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

(63) Section 8 was amended by paragraphs 1 and 2 of Schedule 17 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(64) Schedule 2A was inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016.

(65) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), and sections 186(1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(66) Section 152 was amended by S.I. 2009/1307.

(67) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker’s appropriation of it;
 - (iii) the undertaker’s entry onto it; or
 - (iv) the undertaker’s taking temporary possession of it,
 that any or all of those paragraphs do not apply to any right specified in the notice; and
 - (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (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 is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

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

Power to override easements and other rights

24.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

- (3) Where an interest, right or restriction is overridden by paragraph (1), compensation—
- (a) is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
 - (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

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

- (a) is liable to pay compensation by virtue of paragraph (3); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

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

(6) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

Modification of Part 1 of the 1965 Act

25.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125(68) (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(69) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118(70) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the 5 year period mentioned in article 21 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the A303 (Amesbury to Berwick Down) Development Consent Order 2023”.

(3) In section 11A(71) (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”; and
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 21 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the A303 (Amesbury to Berwick Down) Development Consent Order 2023”.

(5) In Schedule 2A(72) (counter-notice requiring purchase of land not in notice to treat)—

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

“(2) But see article 27(4) (acquisition of subsoil, etc., only) of the A303 (Amesbury to Berwick Down) Order 2023, which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

(b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 14 (protective works to buildings), 15 (authority to survey and investigate land), 29 (temporary use of land for constructing the authorised development) or 30 (temporary use of land for maintaining the authorised development) of the A303 (Amesbury to Berwick Down) Development Consent Order 2023.”.

(68) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

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

(70) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25 to, the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

(71) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(72) Schedule 2A was inserted by section 199(1) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016.

Application of the 1981 Act

- 26.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act) for subsection (2) substitute—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) In section 5(73) (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(74) (time limit for general vesting declaration).
- (6) In section 5B(75) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118(76) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the 5 year period mentioned in article 21 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the A303 (Amesbury to Berwick Down) Development Consent Order 2023”.
- (7) In section 6(77) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(78) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7(79) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1(80) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 27(4) (acquisition of subsoil, etc., only) of the A303 (Amesbury to Berwick Down) Development Consent Order 2023, which excludes the acquisition of subsoil or airspace only from this Schedule.”
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil, etc., only

- 27.**—(1) The undertaker may acquire compulsorily so much of, or such rights over, the subsoil of and airspace over the land referred to in paragraph (1) of article 19 (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) In the case of the Order land specified in columns (1) and (2) of Schedule 6 (land in which only subsoil or new rights in and above subsoil and surface may be acquired) the undertaker’s powers of compulsory acquisition under article 19 are limited to—

(73) Section 5 was amended by section 183 of, and paragraphs 4 and 6 of Schedule 15 to, the Housing and Planning Act 2016.

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

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

(76) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

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

(78) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2017/16.

(79) Section 7 was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016.

(80) Schedule A1 was inserted by paragraphs 1 and 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.

- (a) the acquisition of such subsoil; and
- (b) the acquisition of such easements or other new rights and the imposition of restrictive covenants in the remaining subsoil and over the surface of the land,

as the undertaker may require for or in connection with the authorised development.

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A)(81) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

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

(6) References in paragraph (2)(a) to subsoil are references to the subsoil lying at and below the depths specified in column (3) of Schedule 6 beneath the level of the surface of the land, and references to the remaining subsoil in paragraph (2)(b) are references to the part of the subsoil lying above the shallowest part of the subsoil acquired under paragraph (2)(a) but below the level of the surface of the land.

(7) For the purposes of paragraph (6) “the 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 river, dock, canal, navigation, watercourse or other water area, the level of the surface of the ground covered by water; or
- (c) in any other case, ground surface level,

at the time of this Order coming into force.

Rights over or under streets

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

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker

(81) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016.

acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

Temporary possession of land

Temporary use of land for constructing the authorised development

29.—(1) The undertaker may, in connection with the construction of the authorised development but subject to article 21 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 7 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11(82) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(83) (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land referred to in sub-paragraph (a);
- (c) construct temporary works (including the provision of means of access) and buildings on the land referred to in sub-paragraph (a); and
- (d) construct any works on the land referred to in sub-paragraph (a) as are mentioned in Schedule 1 (authorised development).

(2) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

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

- (a) in the case of any land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 7; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) of the 1981 Act in relation to that land.

(82) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c.22), and S.I. 2009/1307.

(83) Section 4 was amended by section 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016.

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

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

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

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

(7) Subject to article 37 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

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

(10) Section 13(84) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Temporary use of land for maintaining the authorised development

30.—(1) Subject to paragraph (3), at any time during the maintenance period relating to any of the authorised development, the undertaker may—

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

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

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

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

(84) Section 13 was amended by sections 62(3) and 139 of, and paragraph 27 and 28 of Schedule 13, and Part 3 of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

of the land including the particulars of the part of the authorised development for which possession is to be taken.

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

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

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

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

(11) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which—

- (a) that part of the authorised development is first opened for public use (where that part of the authorised development is intended to be used by the public); or
- (b) in respect of any other part of the authorised development, that part is first brought into operational use by the undertaker.

Supplementary

Statutory undertakers

31.—(1) Subject to the provisions of article 22(4) (compulsory acquisition of rights), Schedule 11 (protective provisions) and paragraph (2), the undertaker may—

- (a) exercise the powers conferred by article 19 (compulsory acquisition of land) and article 22 (compulsory acquisition of rights) in relation to so much of the Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

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

- (a) Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) article 32 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

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

(2) Where a street is stopped up under article 10 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

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

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

(4) If in the course of the execution of relocation works under paragraph (2)—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

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

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

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

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

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
 - (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.
- (8) In this article—
- “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) (interpretation of chapter 1) of the Communications Act 2003(85).

Recovery of costs of new connection

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

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31, any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 32 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

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

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

Special category land

34.—(1) On the exercise by the undertaker of the relevant Order powers, the special category land is not to vest in the undertaker until the undertaker has acquired the replacement land and the Secretary of State (in consultation with the planning authority) has certified that a scheme for the provision of the replacement land as open space and a timetable for the implementation of the scheme has been received from the undertaker.

(2) On the requirements of paragraph (1) being satisfied, the special category land is to vest in the undertaker and be discharged from all rights, trusts and incidents to which it was previously subject.

(3) On the exercise of the relevant Order powers, the rights to be acquired over the special category (rights) land are to vest in the undertaker or, where the powers of article 22(1) (compulsory acquisition of rights) are with the undertaker’s consent under article 22(2) exercised by a statutory undertaker, vest in that statutory undertaker, and the special category (rights) land is to be discharged

from all private rights to which it was previously subject in accordance with article 23(2) (private rights over land).

(4) On the date on which the replacement land is laid out and provided in accordance with the scheme requirements at paragraph (1), the replacement land is to vest in any person in whom the special category land was vested immediately before it was vested in the undertaker and is to be subject to the same rights, trusts and incidents as attached to the special category land.

(5) In this article—

“the relevant Order powers” means the powers exercisable over the special category land by the undertaker under article 19 (compulsory acquisition of land) or article 22 (compulsory acquisition of rights);

“the special category land” means the land identified as forming open space and numbered 10-16 and 11-06 in the book of reference and shown on the special category land plans;

“the special category (rights) land” means the land identified as forming open space and numbered 10-18, 10-19, 11-04 and 11-05 in the book of reference and on the special category land plans; and

“the replacement land” means the land identified as such and numbered 10-17 and 11-33 in the book of reference and on the land plans.

Compensation

Disregard of certain interests and improvements

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

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

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

Set-off for enhancement in value of retained land

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

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 22 (compulsory acquisition of rights), the tribunal must set off against the value of the rights so acquired—

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

- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,
- which will accrue to that person by reason of the construction of the authorised development.
- (3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

No double recovery

37. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

PART 4

OPERATIONAL PROVISIONS

Power to operate and use the tunnel

38. The undertaker may operate and use the tunnel.

Closing the tunnel

39.—(1) The undertaker may, whenever in its opinion it is necessary to do so, close the tunnel, whether wholly or partially.

(2) Where the undertaker proposes to close the tunnel it must, except in an emergency, and subject to any tunnel closure management plan produced in accordance with paragraph 4 (outline environmental management plan) of Schedule 2 (requirements)—

- (a) give not less than 7 days' notice in such manner as the undertaker considers appropriate; and
- (b) throughout the period of such closure display signs at convenient situations on the roads communicating with the tunnel area giving warning of the closure.

(3) In this article “emergency” means any circumstance whether existing or imminent, which the undertaker considers is likely to cause danger to—

- (a) persons or property, including the tunnel or any person in or using the tunnel; or
- (b) the environment.

No apparatus in the tunnel area without consent

40. Regardless of anything contained in any enactment, no person is to enter upon, break up or interfere with the tunnel, or any part of it, for the purpose of placing or doing anything in or in relation to any sewer, drain, main, pipe, wire or other apparatus or executing any work except with the written consent of the undertaker and in accordance with such terms and conditions as the undertaker may determine, including as to payment, such consent not to be unreasonably withheld and any disputes as to failure to consent or over terms and conditions to be subject to the arbitration provisions in article 57 (arbitration).

Removal of vehicles

41.—(1) If any obstruction is caused by a vehicle waiting, loading, unloading or breaking down in the tunnel area, the person in charge of the vehicle must immediately remove it; and if that person fails to do so an authorised person may take all reasonable steps to remove the obstruction.

(2) An authorised person who removes a vehicle under paragraph (1) may do so by towing or driving the vehicle or in such other manner as the authorised person may think necessary and may take such measures in relation to the vehicle as the authorised person considers necessary to enable the vehicle to be removed.

(3) Where an authorised person requires a person to remove a vehicle which is causing an obstruction in the circumstances described under paragraph (1) and the authorised person determines that the manner of removal proposed by the person required to remove it may cause danger to other persons using the road, the authorised person may require the vehicle to be moved in such other manner as the authorised person considers safe or may remove or arrange for the removal of the vehicle if the person required to remove it refuses to remove it in the manner so required.

(4) A vehicle removed by an authorised person under this article—

- (a) may be returned immediately to the person in charge of that vehicle; or
- (b) where immediate return of that vehicle to the person in charge of it is not practicable or appropriate, must be delivered to the undertaker or to a person authorised by the undertaker to keep vehicles so removed (“the custodian” in either case).

(5) The custodian is entitled to recover the relevant charges from any person responsible.

(6) The custodian may dispose of a vehicle at any time after its removal—

- (a) where the owner of the vehicle has disclaimed all rights of ownership of the vehicle;
- (b) where in the opinion of the authorised person the vehicle is in such a condition that it ought to be destroyed; or
- (c) in the case of a vehicle, not falling within sub-paragraph (a) or (b), which—
 - (i) does not display a licence (whether current or otherwise and whether or not the vehicle is required to display a licence), and
 - (ii) does not display any registration mark (whether indicating registration within or outside the United Kingdom).

(7) In a case to which paragraph (6) does not apply, the custodian must—

- (a) if the vehicle carries a United Kingdom registration mark, ascertain from records kept by the Secretary of State under the Vehicle Excise and Registration Act 1994⁽⁸⁶⁾ the name and address of the person by whom the vehicle is kept; or
- (b) if the vehicle does not carry such a registration mark, make such inquiries as appear to the custodian reasonably practicable to ascertain the owner of the vehicle.

(8) If the custodian, having taken the relevant steps required under paragraph (7), has been unable to ascertain the name and address of the owner of the vehicle, the custodian may dispose of the vehicle.

(9) A custodian who has ascertained the name and address of the owner of the vehicle must issue a notice to the owner at the owner’s address in the form prescribed in paragraph (10).

(10) A notice under paragraph (9) must—

- (a) contain the specified information; and
- (b) state—

⁽⁸⁶⁾ 1994 c. 22.

- (i) the place to which the vehicle has been removed;
- (ii) that if the recipient is the owner of the vehicle, the recipient is required to remove the vehicle from the custody of the custodian and pay the relevant charges within the period specified; and
- (iii) that the custodian intends to dispose of the vehicle if it is not removed within that period.

(11) The periods specified in paragraph (10)(b)(ii) and (iii) must be not less than 7 days beginning with the day on which the notice is served.

(12) If the person to whom the notice issued under paragraph (9) fails to comply with all of its requirements, the custodian may dispose of the vehicle at any time after the date specified in the notice in accordance with paragraph (10).

(13) As soon as reasonably practicable following the disposal of a vehicle under this article the custodian must—

- (a) where the vehicle carried a GB registration mark or a mark indicating registration in Northern Ireland, give information relating to the disposal to—
 - (i) the Secretary of State;
 - (ii) the chief officer of the police force in whose area the vehicle was removed under paragraph (1); and
 - (iii) HPI Ltd.
- (b) where the vehicle carried a mark indicating registration outside the United Kingdom, give information relating to the disposal to—
 - (i) the Secretary of State;
 - (ii) the Commissioners of Customs and Excise; and
 - (iii) the chief officer of the police force in whose area the vehicle was removed under paragraph (1);
- (c) where the vehicle did not carry any registration mark, give information relating to the disposal to the chief officer of the police force in whose area the vehicle was removed under paragraph (1);
- (d) in the case of any vehicle, information relating to the disposal must be given to any person who appears to the custodian to have been the owner of the vehicle immediately before it was disposed of.

(14) Where, by virtue of paragraph (5), any sum is recoverable in respect of a vehicle by a custodian, the custodian is entitled to retain custody of the vehicle until that sum is paid.

(15) A person (“the claimant”) may take possession of a vehicle (with its contents) which has been removed and delivered to a custodian and has not been disposed of under this article, if the conditions specified in paragraph (16) are satisfied.

(16) The conditions are that—

- (a) the claimant satisfies the custodian that the claimant is the owner of the vehicle or that the claimant is authorised by the owner to take possession of the vehicle;
- (b) all outstanding relevant charges are paid to the custodian; and
- (c) the claimant takes possession of the vehicle within 7 days of the custodian being satisfied that—
 - (i) the claimant is the owner of the vehicle or is authorised by the owner to take possession; and
 - (ii) any relevant charges have been paid to the custodian.

(17) Where it appears to the custodian that more than one person is the owner of the vehicle, or person authorised by the owner, the custodian must give possession of the vehicle to the first claimant who satisfies the conditions set out in paragraph (16).

(18) If before the end of the period of one year beginning with the date on which a vehicle is disposed of pursuant to this article, a person claims to have been the owner of the vehicle at the time when it was disposed of and the conditions specified in paragraph (19) are fulfilled, a sum calculated in accordance with paragraph (20) is payable by the custodian to the owner.

(19) The conditions are that—

- (a) the person claiming satisfies the custodian that the person so claiming was the owner of the vehicle at the time it was disposed of;
- (b) the claim is made before the end of the period of one year beginning with the date on which the vehicle was disposed of; and
- (c) no previous claim in respect of the vehicle has been made.

(20) The sum payable under paragraph (18) is calculated by deducting from the proceeds of sale the relevant charges that would have been payable had the vehicle been claimed by the owner immediately before its disposal.

(21) Where it appears to the custodian of a vehicle that more than one person is the owner, the custodian must treat the first person who makes a claim that satisfies the conditions set out in paragraph (19) as the owner for the purposes of this article.

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

(23) For the purposes of this article “breaking down” includes by way of a mechanical defect, lack of fuel, oil, water or power required for the vehicle or any other circumstances in which a person in charge of the vehicle could not immediately, safely and without damage to the vehicle or its accessories drive it under its own power away from the tunnel area.

(24) In this article—

“GB registration mark” means a registration mark issued in relation to a vehicle under the Vehicle Excise and Registration Act 1994;

“HPI Ltd” means HPI Limited (company number 04068979), whose registered office is at Capitol House, Bond Court, Leeds, Yorkshire, England, LS1 5EZ, being a company incorporated under the Companies Act 1985 and includes its successors and assigns;

“information relating to the disposal” means, in relation to a vehicle—

- (a) any information which is sufficient to relate the information now being given to any information previously given to the same person in respect of the removal, storage or disposal of the vehicle;
- (b) such of the specified information as has not been previously given to the same person in respect of the removal, storage or disposal of the vehicle; and
- (c) information as to whether the vehicle was disposed of by destruction or by sale and if by sale, the sum realised.

“owner”, in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement, includes the person entitled to possession of the vehicle under the agreement;

“person responsible”, in relation to a vehicle, means—

- (a) the owner of the vehicle at the time when it was put in the place from which it was removed as mentioned in paragraph (1), unless the owner demonstrates that the owner was not concerned in, and did not know of, the vehicle being put in the tunnel area;
- (b) any person by whom the vehicle was put in that place;
- (c) any person convicted of an offence under section 2(1) (penalty for unauthorised dumping) of the Refuse Disposal (Amenity) Act 1978⁽⁸⁷⁾ in consequence of the putting of the vehicle in that place;

“relevant charges” means the sums and charges prescribed by the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008⁽⁸⁸⁾;

“specified information”, in relation to a vehicle, means such of the following information as can be, or could have been, ascertained from an inspection of the vehicle, or has been ascertained from any other source—

- (a) in the case of a vehicle which carries a GB registration mark, or a mark indicating registration in a country outside Great Britain, particulars of such mark; and
- (b) the make of the vehicle; and

“vehicle” means any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle.

Removal of obstructions

42.—(1) Where an obstruction or hazard is caused in the tunnel area by a load falling from a vehicle and the person in charge of the vehicle fails to remove it, an authorised person may take all reasonable steps to remove the load.

(2) An authorised person—

- (a) may return a load which the authorised person has removed immediately to the person in charge of the vehicle from which it has fallen; or
- (b) where a return of the load which the authorised person has removed to the person in charge of the vehicle from which it has fallen is not practicable or appropriate, must deliver the load to the undertaker or to a person authorised by the undertaker to keep loads so removed (“the custodian” in either case).

(3) The custodian must take reasonable steps to ascertain the identity of the owner of the load.

(4) Where the custodian has been unable to ascertain contact details for the owner of the load, the custodian may dispose of or sell the load as the custodian thinks fit.

(5) Where the custodian has been able to ascertain contact details for the owner of the load, the custodian must notify such person that—

- (a) the load is in the possession of the custodian;
- (b) the owner must take possession of the load within 5 weeks of the date of the notice;
- (c) the owner may only take possession of the load on the payment of the custodian’s expenses in removing and storing the load; and
- (d) if the owner fails to act in accordance with the requirements in the notice, title in the load vests in the custodian.

(6) The custodian may recover any expenses reasonably incurred in the removal and storage of a load from the owner of the load.

⁽⁸⁷⁾ 1978 c. 3. Section 2(1) was amended by section 46 of the Criminal Justice Act 1982 (c. 48).

⁽⁸⁸⁾ S.I. 2008/2095, as amended by S.I. 2008/3013.

(7) Unless the owner of the load acts in accordance with the notice requirements, title in the load vests in the custodian on the date specified in the notice.

(8) Where a load consists of, or includes, liquids or semi-liquids or items which are loose or an aggregate, or noxious, perishable or otherwise hazardous or difficult to collect-up or remove, and the driver of the vehicle fails to remove it or the fallen load poses a hazard, paragraphs (2) to (7) do not apply and an authorised person or custodian (as the case may be) may, as it sees fit, immediately wash, clean or clear away or remove the fallen load or otherwise dispose of it or sell it.

(9) In this article “vehicle” means any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle.

Dangerous goods

43.—(1) The undertaker is to be treated as having in the tunnel area the same enforcement powers as any body mentioned in regulation 32 (enforcement) of the Carriage of Dangerous Goods and the Use of Transportable Pressure Equipment Regulations 2009⁽⁸⁹⁾ (“the 2009 Regulations”) in relation to roads and to the extent permitted by regulation 32.

(2) The exercise of the enforcement powers mentioned in paragraph (1) is subject to any limitation which applies to the Health and Safety Executive under the 2009 Regulations.

(3) Nothing in this article prejudices or prevents a body mentioned in regulation 32 of the 2009 Regulations from exercising any power conferred on it by those Regulations.

Byelaws relating to the tunnel area

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

- (a) the efficient management and operation of the tunnel area;
- (b) travel in the tunnel area;
- (c) the maintenance of order in the tunnel area;
- (d) the conduct of persons in the tunnel area.

(2) The byelaws contained in Schedule 8 (byelaws) have effect in relation to the tunnel area and continue to have effect until such time as they are amended or revoked by further byelaws made under paragraph (1) and in each case are to be treated as if they are byelaws that have been made by the undertaker under paragraph (1) and confirmed by the Secretary of State on the date this Order comes into force.

(3) Subject to paragraph (4), the provisions of subsection 236(3) to (8), and (11) (procedure, etc., for byelaws) of the Local Government Act 1972⁽⁹⁰⁾ apply in relation to byelaws other than those in Schedule 8 made by the undertaker under paragraph (1), as if the undertaker were a local authority for the purposes of subsection 236(1) of the Local Government Act 1972.

(4) The undertaker may make byelaws under paragraph (1) in accordance with the procedure in the Byelaws (Alternative Procedure) (England) Regulations 2016⁽⁹¹⁾ as if those regulations applied to the making and revoking of byelaws under this article.

(5) Byelaws made under this article are enforceable by the undertaker and any authorised person.

⁽⁸⁹⁾ S.I. 2009/1348, regulation 32 was substituted by S.I. 2014/469 and subsequently amended by S.I. 2015/1682.

⁽⁹⁰⁾ 1972 c. 70. Section 236 was amended by section 84 of, and paragraph 31(1) of Schedule 14 to, the Local Government Act 1985 (c. 51), paragraph 34 of Schedule 6 to the Local Democracy, Economic Development and Construction Act 2009 (c. 20), and section 129(2) of the Local Government and Public Involvement in Health Act 2007 (c. 28). There are other amendments to section 236 which are not relevant to this Order.

⁽⁹¹⁾ S.I. 2016/165.

(6) A person who breaches a byelaw made under this article commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Fixed penalty notices

45.—(1) This article applies where it appears to an authorised person that a person has committed an offence under byelaws made under article 44 (byelaws relating to the tunnel area).

(2) The authorised person may serve on that person a fixed penalty notice in respect of the offence.

(3) Where a person is given a fixed penalty notice under this article in respect of an offence—

- (a) no proceedings may be instituted for that offence before the expiration of 14 days after the date of the notice; and
- (b) that person may not be convicted of the offence if the fixed penalty is paid before the expiration of 14 days after the date of the notice.

(4) A fixed penalty notice must state—

- (a) the amount of the fixed penalty;
- (b) particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence;
- (c) the time by which and the manner (including the number to be used for payments by credit or debit card) in which the fixed penalty must be paid; and
- (d) that proceedings may be instituted if payment is not made within the time specified in the fixed penalty notice.

(5) The amount of the fixed penalty is—

- (a) one fifth of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction provided that person pays the fixed penalty in full within 7 days of issue of the fixed penalty notice; or
- (b) one half of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction.

(6) An authorised person may require a person to whom this article applies to pay a deposit of one tenth of the maximum amount of the fine to which a person may be liable under level 3 on the standard scale on accepting a fixed penalty notice if that person fails to provide, when requested, a residential address in the United Kingdom.

(7) Payment of the deposit must be made—

- (a) in person to the authorised person by cash, credit or debit card, if the authorised person has the necessary means to accept payment in that manner;
- (b) by telephone by credit or debit card to the number stipulated in the fixed penalty notice for making payments; or
- (c) by App.

(8) The undertaker must apply the deposit towards payment of the fixed penalty.

(9) In any proceedings a certificate which—

- (a) purports to be signed on behalf of an officer of the undertaker; and
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(10) In this article—

“App” means a software application for use on an electronic device which provides for payment by credit or debit card and which is provided by the undertaker for that purpose;

“credit card” means a card or similar thing issued to any person, use of which enables the holder to defer payment of the deposit;

“debit card” means a card or similar thing issued by any person, use of which causes the deposit to be paid by the electronic transfer of funds from any current account of the holder at a bank or other institution providing banking facilities; and

“fixed penalty notice” means a notice offering the opportunity of the discharge of liability to conviction of an offence under byelaws made under article 44.

Classification of roads, etc.

46.—(1) On the date on which the roads described in Parts 1 to 8 of Schedule 9 (classification of roads etc.) are completed and open for traffic—

(a) the roads described in Parts 1, 2 and 6 of Schedule 9 are to become trunk roads as if they had become so by virtue of an order made under section 10(2)(92)(general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads;

(b) subject to sub-paragraph (c), the roads described Parts 3, 4, 5, 7 and 8 of Schedule 9 are to be classified as set out in that Part and are to be a classified road for the purpose of any enactment or instrument which refers to highways classed as classified roads, as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act; and

(c) the roads described in paragraph 11 in Part 4, paragraph 18 in Part 7 and paragraph 22 in Part 8 of Schedule 9 are to be unclassified.

(2) Subject to paragraph (3), the undertaker may vary the classification of the roads, or any part of those roads, provided for in paragraph (1) and such variation may provide for any trunk road comprised in the authorised development and referred to in paragraph (1)(a) to be classified as a special road.

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

(a) given not less than 4 weeks’ notice in writing of the undertaker’s intention so to do to the chief officer of police and to the local highway authority in whose area the road is situated; and

(b) published a notice, declaring the date on which that road or part of it is to be classified, not less than 7 days before that date, in at least one local newspaper circulating in the area in which the road or, as the case may be, the relevant part of it is situated and in the London Gazette.

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

(5) Any roads classified as a special road in accordance with paragraph (2) are to be—

(a) classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads; and

(b) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 (classes of traffic for purposes of special roads) to the 1980 Act.

(92) Section 10(2) was amended by section 22(2)(a) of the 1991 Act and by section 1(6) of, and paragraphs 1 and 10(1) and (2) of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(6) On any such days as the undertaker may determine, unless otherwise agreed in writing with the local highway authority, the roads described in Part 9 of Schedule 9 are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.

(7) The application of paragraphs (1) to (6) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

Clearways

47.—(1) From such day as the undertaker may determine, except as provided in paragraph (2) below, no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 2 (clearways and prohibitions) of Schedule 10 (traffic regulation measures) where it is identified that such lengths of road are to become a clearway in the corresponding row of column (3) of that Part, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) Nothing in paragraph (1) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the road;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A (the electronic communications code) to the Communications Act 2003⁽⁹³⁾; or
 - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
 - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991⁽⁹⁴⁾; or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000⁽⁹⁵⁾; or
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the person's control.

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

⁽⁹³⁾ 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

⁽⁹⁴⁾ 1991 c. 56.

⁽⁹⁵⁾ 2000 c. 26.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004⁽⁹⁶⁾.

Traffic regulation measures

48.—(1) Subject to the provisions of this article, and from any such days as the undertaker may determine—

- (a) no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of Part 1 (speed limits) of Schedule 10 (traffic regulation measures) along the lengths of road identified in the corresponding row of column (2) of that Part;
- (b) no person is to drive a vehicle on a section of a road which is subject to a variable speed limit at a speed exceeding that indicated by a speed limit sign displayed on a variable message sign (paragraphs (3), (4) and (5) make further provision in respect of variable speed limits);
- (c) subject to paragraph (2) and article 47 (clearways), the restrictions specified in column (3) of Part 2 (clearways and prohibitions) of Schedule 10 are to apply to the lengths of road identified in the corresponding row of column (2) of that Part; and
- (d) the orders specified in column (3) of Part 3 (revocations and variations of existing traffic regulation orders) of Schedule 10 are to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

(2) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011⁽⁹⁷⁾ when used in accordance with regulation 3(5) of those regulations.

(3) A section of road is subject to a variable speed limit in relation to a vehicle being driven along it if—

- (a) the section of road is identified in column (2) of Part 1 (speed limits) of Schedule 10 as being subject to a variable speed limit in column (3) of that Part;
- (b) the vehicle has passed a speed limit sign displayed on a variable message sign; and
- (c) the vehicle has not subsequently passed—
 - (i) another speed limit sign indicating a different speed limit; or
 - (ii) a traffic sign which indicates that the national speed limit is in force.

(4) In relation to a vehicle, the speed limit indicated by a speed limit sign is the speed shown at the time the vehicle passes the sign, or, if higher, the speed limit shown by the sign ten seconds before the vehicle passed the sign.

(5) For the purposes of this article, a speed limit sign displayed on a variable message sign is to be taken as not indicating any speed limit if, ten seconds before the vehicle passed it, the sign had indicated no speed limit or that the national speed limit was in force.

(6) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, in so far as

⁽⁹⁶⁾ 2004 c. 18.

⁽⁹⁷⁾ S.I. 2011/935.

necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—

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

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

(7) The power conferred by paragraph (6) may be exercised at any time prior to the expiry of 24 months from the opening of the authorised development for public use, but subject to paragraph (10), any prohibition, restriction or other provision made under paragraph (6) may have effect both before and after the expiry of that period.

(8) The undertaker must not exercise the powers conferred by paragraph (6), unless the undertaker has—

- (a) given not less than—
 - (i) 12 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,
 to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised the undertaker's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(9) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (6)—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32(98) (power of local authorities to provide parking places) of the 1984 Act,
 and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
- (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(99).

(10) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraphs (1) or (6) within a period of 24 months from the opening of the authorised development.

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

(99) 2004 c. 18.

(11) Before exercising the powers conferred by paragraphs (1) or (6) the undertaker must consult such persons as the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker by any such person.

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

(13) In this article—

“national speed limit” has the meaning given by Schedule 1 (definitions) to the Traffic Signs Regulations and General Directions 2016(100) and a traffic sign which indicates that the national speed limit is in force means a traffic sign of the type shown in diagram 671 in Part 2 (signs and road markings indicating speed limits) of Schedule 10 (signs for speed limits) to the Traffic Signs Regulations and General Directions 2016 which is—

- (a) placed on or near a road; and
- (b) directed at traffic on the carriageway on which the vehicle is being driven;

“road” includes the adjacent hard shoulder and verge;

“speed limit sign” in relation to a vehicle, means a traffic sign of the type shown in diagram 670 in Part 2 of Schedule 10 to the Traffic Signs Regulations and General Directions 2016 which is—

- (a) situated on or near any part of a road specified in column (2) as being subject to a variable speed in limit in column (3) of Part 1 (speed limits) of Schedule 10; and
- (b) directed at traffic on the carriageway on which the vehicle is being driven; and

“variable message sign” has the meaning given by Schedule 1 (definitions) to the Traffic Signs Regulations and General Directions 2016.

PART 5

MISCELLANEOUS AND GENERAL

Benefit of the Order

49.—(1) Subject to article 50 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring functions on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit or accommodation of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

50.—(1) The undertaker may, regardless of any provision in any enactment, with the consent of the Secretary of State—

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

(2) Where an agreement has been made in accordance with paragraph (1), references in the provisions of this Order and any document certified under it that apply to the undertaker are to be read as references to the transferee or the grantee, or any other person who may exercise, enjoy or be responsible for any functions of the undertaker pursuant to that agreement, as the case may be.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker, save where those benefits or rights are exercised by a statutory undertaker or by an owner or occupier of land pursuant to paragraph (2) of article 22 (compulsory acquisition of rights) of this Order, in which case liability for the payment of compensation must remain with the undertaker.

(4) The consent of the Secretary of State under this article is not required where the powers of article 22(1) (compulsory acquisition of rights) are, with the consent of the undertaker given under article 22(2), proposed to be exercised by a statutory undertaker rather than by the undertaker, or are proposed to be exercised for the express benefit or accommodation of owners and occupiers of land, as identified in column (4) of the table in Part 3 of Schedule 3 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) to this Order.

(5) The consent of the Secretary of State is not required for a transfer or grant under this article where the transfer or grant is made to Southern Electric Power Distribution plc for the purposes of undertaking Work No. 1C(v) and associated ancillary works.

(6) For the purposes of this article “statutory undertaker” includes Esso.

Application of landlord and tenant law

51.—(1) This article applies to any agreement entered into by the undertaker under article 50 (consent to transfer benefit of Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

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

(3) No enactment or rule of law to which paragraph (2) applies is to 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

52. Development consent granted by this Order for development on Order land is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land for the purposes of that Act) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

53.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(**101**) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(**102**) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the construction or maintenance of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(**103**); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

Protective provisions

54. Schedule 11 (protective provisions) has effect.

Certification of plans, etc.

55.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 12 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 12 requires to be amended to reflect the terms of the Secretary of State’s decision to make this Order, that plan or document in the form amended to the Secretary of State’s satisfaction is the version of the plan or document required to be certified under paragraph (1).

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

(4) The undertaker must, following certification of the plans or documents in accordance with paragraph (1), make those plans or documents available in electronic form for inspection by members of the public.

(101) 1990 c. 43. There are amendments to section 82(1) which are not relevant to this Order.

(102) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40). There are other amendments to section 82(2) that are not relevant to this Order.

(103) 1974 c. 40. Sections 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to section 61 which are not relevant to this Order.

Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(104) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

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

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

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

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

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

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

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

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

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

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

Consents, agreements and approvals

58.—(1) Where any application is made to a relevant authority, the consent, agreement or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was received, the relevant authority is deemed to have given its consent, agreement or approval, as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) In this article—

“application” means an application or request for any consent, agreement or approval required or contemplated by articles 9 (construction and maintenance of new, altered or diverted streets and other structures), 11 (temporary stopping up and restriction of use of streets), 13 (discharge of water), 15 (authority to survey and investigate land) and 48 (traffic regulation measures); and
“relevant authority” means a planning authority, a traffic authority, a highway authority a street authority or an owner of a public sewer or drain as defined in article 13(7)(a).

Signed by the authority of the Secretary of State for Transport

Martin Gilmour
Deputy Director, Planning, Transport and
Housing Division
Department for Transport

14th July 2023