



Draft Development Consent Order

Regulation 5(2)(b)

On behalf of
Oxfordshire Railfreight Limited

DRAFT

May 2022

202X No. 0000

THIS DRAFT DCO HAS BEEN PRODUCED FOR THE FIRST STAGE OF CONSULTATION FOR THE PROPOSED DEVELOPMENT. IT IS A WORK IN PROGRESS AND WILL BE REGULARLY AMENDED AS THE PROPOSED DEVELOPMENT PROCEEDS THROUGH ITS CONSULTATION STAGES AND SUBSEQUENT EXAMINATION.

PLEASE SEE THE SEPERATELY PRODUCED OUTLINE DRAFT EXPLANATORY MEMORANDUM FOR AN EXPLANATION OF ITS CONTENTS.

THE WORDS IN ITALICS IN THIS DRAFT DCO REFER TO DOCUMENTATION WHICH IT IS ANTICIPATED WILL BE PREPARED IN DUE COURSE AND SUBMITTED WITH THE APPLICATION BUT HAS NOT YET BEEN PRODUCED AT THIS STAGE OF THE SCHEME DEVELOPMENT. MOST OF THIS DOCUMENTATION WILL BE PREPARED IN DRAFT FOR THE SECOND STAGE OF CONSULTATION.

INFRASTRUCTURE PLANNING

**The Oxfordshire Strategic Rail Freight Interchange and
Highways Order 202X**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - ***

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an order granting development consent.

The application was examined in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c) by a [Panel of [] members (the Panel) /single appointed person] appointed by the Secretary of State in accordance with Chapter [2/3] of Part 6 of the 2008 Act.

The [Panel/single appointed person], having considered the representations made and not withdrawn and the application with the accompanying documents, in accordance with section [74/83] of the 2008 Act has reported to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn and the report of the [Panel/single appointed person] has decided to make an Order granting development consent for the development described in the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

The Secretary of State in exercise of the powers conferred by section 114, 115, 117, 120 and 122 of, and Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1
PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Oxfordshire Strategic Rail Freight Interchange and Highways Order 202[X] and comes into force on [] 202[].

Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

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

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

(a) 2008 c. 29, Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20). Section 37 was amended by sections 128(2) and 137 of, and paragraphs 1 and 5 of Part 1 of Schedule 13 to, the Localism Act 2011 (c. 20).

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732 and S.I. 2013/522, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682 and S.I. 2017/572. There are other amendments to the Regulations which are not relevant to this Order.

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) 1961 c.33.

(e) 1965 c.56.

(f) 1980 c.66.

(g) 1981 c.66.

(h) 1984 c.27.

(i) 1990 c.8.

(j) 1991 c.22.

(k) 2008 c. 29.

“the 2010 Regulations” means the Community Infrastructure Levy Regulations 2010(a);

“the 2017 Regulations” means the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017(b);

“the 2017 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(c);

“*access and rights of way plans*” means the plans of that description referred to in Schedule 16 (certification of plans and documents) and certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;

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

“apparatus” for the purposes of article 8 (street works) and article 35 (apparatus and rights of statutory undertakers in stopped up streets) has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act and any works carried out under the requirements;

“*book of reference*” means the document of that description referred to in Schedule 16 and certified as the book of reference by the Secretary of State for the purposes of this Order;

“bridges” means the bridges shown on the bridge plan;

“*bridges plan*” means the Bridges and Major Structures Overview plan referred to in Schedule 16 and certified as the bridges plan by the Secretary of State for the purposes of this Order;

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

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

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

“chief officer of police” means the chief constable of Oxfordshire Police Force or any successor in function;

“commence” or “commencement” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), as part of the authorised development with the exception of
[site prep etc]]

unless the context indicates otherwise and the words “commencement and commenced are to be construed accordingly;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act(d);

“electronic communications code” has the same meaning as in section 106 of the Communications Act 2003(e);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the Communications Act 2003; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

(a) S.I. 2010/948 as amended by S.I. 2011/987, S.I. 2012/635, S.I. 2012/2975, S.I. 2013/982, S.I. 2014/385, S.I. 2015/377, S.I. 2015/644, S.I. 2015/836 and S.I. 2018/172.

(b) S.I. 2017 No. 3.

(c) S.I. 2017/572, amended by S.I. 2017/1012.

(d) 1980 c. 66. The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(e) 2003 c. 21. Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

“*environmental statement*” means the document of that description referred to in Schedule 16 and certified as the environmental statement by the Secretary of State for the purposes of this Order;

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

“hedgerow” has the same meaning as in the Hedgerow Regulations 1997(a);

“HGV” means any vehicle with an operational weight capable of exceeding 7.5 tonnes;

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

“*highway classification plans*” means the plans of that description referred to in Schedule 16 and certified as the highway classification plans by the Secretary of State for the purposes of this Order;

“*highway plans*” means the plans of that description referred to in Schedule 16 and certified as the highway plans by the Secretary of State for the purposes of this Order;

“highway works” means the works comprised in Work Nos. [9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23 and 24];

“*land plans*” means the plans of that description referred to in Schedule 16 and certified as the land plans by the Secretary of State for the purposes of this Order;

“lead local flood authority” means Oxfordshire County Council or any successor in function as lead local flood authority or equivalent body;

“level crossings” means the level crossings shown on the access and rights of way plans;

“local highway authority” means Oxfordshire County Council;

“local planning authority” means Cherwell District Council;

“maintain” includes inspect, repair, adjust, alter, clear, refurbish or improve and any derivative of “maintain” is to be construed accordingly;

“main site” means that part of the land within the Order limits comprising the areas of land described on the works plans as Works Nos. [1 to 8 (inclusive) and 14 and 15];

“National Highways” means National Highways Limited (company number 09346363), whose registered office is at Bridge House, Walnut Tree Close, Guildford, GU1 4ZZ, appointed as highway authority for the highways specified in article 2 of the Appointment of a Strategic Highways Company Order 2015(b) or any successor in function;

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

“Order limits” means the limits shown on the works plans represented by a red line within which the authorised development may be carried out;

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

“parameters plan” means the plan of that description referred to in Schedule 16 and certified as the parameters plan by the Secretary of State for the purposes of this Order;

“public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board or a lead local flood authority or a sewerage undertaker;

“railway” has the same meaning as in the 2008 Act;

“*railway plans*” means the plans of that description referred to in Schedule 16 and certified as railway plans by the Secretary of State for the purposes of this Order;

“relevant highway authority” means in any provision of this Order the highway authority for any area of land to which that provision relates;

(a) S.I. 1997/1160.

(b) S.I. 2015/376

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

“relevant street authority” means in any provision of this Order the street authority for any area of land to which that provision relates;

“relevant traffic authority” means in any provision of this Order the traffic authority for any area of land to which that provision relates;

“relocation works” means works executed, or apparatus provided, under paragraph (2) of article 35 (apparatus and rights of statutory undertakers in stopped up streets);

“requirements” means the requirements set out in Part 1 of Schedule 2 (requirements);

“*speed limit plans*” means the plans of that description referred to in Schedule 16 and certified as the speed limit plans by the Secretary of State for the purposes of this Order;

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

“statutory utility” means a statutory undertaker for the purposes of the 1990 Act or a public communications provider as defined in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a);

“strategic road network” means that part of the highway network comprising trunk roads and motorways;

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

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

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

“traffic officer” means a person designated under section 2 (designation of Traffic Officers) of the Traffic Management Act 2004(d);

“*traffic regulation plans*” means the plans of that description referred to in Schedule 16 and certified as the traffic regulation plans by the Secretary of State for the purposes of this Order;

“tribunal” means the Lands Chamber Upper Tribunal;

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

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

- (a) section 10 or 19(1) of the 1980 Act(f);
- (b) an order or direction under section 10 of that Act;
- (c) this Order; or
- (d) any other enactment;

“the undertaker” means—

- (a) Oxfordshire Railfreight Limited (a company registered in Jersey with company number 126515) whose registered office is at 2nd Floor Gaspe House 66-72 Esplanade St Helier Jersey JE1 1GH; and
- (b) in respect of the main site only, any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008

(a) 2003 c. 21. There are amendments to section 151 of the Communications Act 2003 which are not relevant to this Order.

(b) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26).

(c) 1984 c. 27. Section 121A was inserted by section 168(1) of, and paragraph 70 of Part II of Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22), and was amended by section 1(b) of, and paragraphs 70 and 95(1) and (3) of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7). There are other amendments to schedule 121A of the Act which are not relevant to this Order.

(d) 2004 c. 18.

(e) 1990 c. 8. Section 198 was amended by sections 192(1), (2)(a), (b) and (c), and section 238 of, and paragraphs 7 and 8 of Schedule 8, and Schedule 13 to, the Planning Act 2008 (c. 29), and sections 31, 32, 84 of, and paragraph 20 of Schedule 6, paragraph 34 of Schedule 7 and Schedule 19, and Parts I and II of, the Planning and Compensation Act 1991 (c. 34) and section 42(3) of the Planning and Compulsory Purchase Act 2004 (c. 5).

(f) 1980 c. 66. Section 10 was amended by section 22(2)(a), (b) and (cc) of the New Roads and Street Works Act 1991 (c. 22), section 1(6) of, and paragraphs 1, 10(1)-(4) of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7), section 36 of, and paragraphs 21 and 22 of Schedule 2 to, the Planning Act 2008 (c. 29). Section 19(1) was amended by section 1(6) of, and paragraphs 1 and 15 of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

Act for such time as that section applies to that person but does not include any such person until such time as the authorised development is commenced on land owned by that person;

“verge” means any part of the street which is not a carriageway;

“water authority” means Thames Water Limited (company number 02366623) whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire, RG1 8DB and any successor in function;

“warehousing” means the warehousing the construction of which is authorised by this Order;

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

“the works plans” means the plans of that description referred to in Schedule 16 and certified as the works plans by the Secretary of State for the purposes of this Order.

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

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

(4) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development) and references to numbered requirements are to the requirements as numbered in Part 1 of Schedule 2 (requirements).

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

(6) Where the term approximate precedes a figure of measurement or quantum then the flexibility accorded by that word is limited by the parameters and the limits of deviation as described in article 4 and does not authorise any works which would result in significant environmental effects which have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.

(7) Where in this Order a document or a plan is referred to by reference to a document number, the reference is to the document or plan of that number referred to in Schedule 16.

(8) References to any statutory body includes that body's successor in respect of functions which are relevant to this Order.

(9) Unless otherwise stated references to Cherwell District Council refer to that body in its capacity as local planning authority and references to Oxfordshire County Council refer to that body in its capacity as local highway authority.

PART 2

PRINCIPAL POWERS

Development consent granted by the Order

3. Subject to the provisions of this Order, the undertaker is granted development consent for the authorised development to be carried out and used within the Order limits.

Parameters of authorised development

4. The authorised development is to be carried out within the parameters shown and described on the parameters plan and in carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) in respect of the highway works deviate vertically from the levels shown on the highway plans to a maximum of [1.5] metres upwards or downwards;

- (c) in respect of the railway works comprised in Work Nos. [1 and 2] deviate vertically from the levels shown on the *railway plans* to a maximum of [1.5] metres upwards or downwards; and
- (d) in respect of the bridges, deviate vertically from the levels shown on the *bridges plans* to a maximum of [] metres upwards or [] metres downwards,

except that these maximum limits described in (a) to (d) do not apply to constrain the authorised development when it is demonstrated by the undertaker, on application, to the local planning authority's satisfaction, and the local planning authority certifies accordingly, that a deviation in excess of these limits would not be likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement.

Authorisation of use

5. Subject to the provisions of this Order, the undertaker and any persons authorised by the undertaker may operate and use that part of the authorised development comprised in Work Nos. 1 - [] inclusive for the purposes of a rail freight terminal and warehousing, any purposes for which such parts of the authorised development is designed and for any purposes ancillary to those purposes.

Maintenance of authorised development

6.—(1) 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.

(2) Paragraph (1) does not apply to the highway works the maintenance of which is governed by article 14 (maintenance of highway works) and Parts 2 and 3 of Schedule 14 (protective provisions).

(3) Paragraph (1) does not extend to any maintenance works which would be likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.

Benefit of Order

7.—(1) Subject to paragraphs (2), (3) and (4) the undertaker shall have the benefit of the Order.

(2) Oxfordshire Railfreight Limited has the sole benefit of the provisions of Part 5 (powers of acquisition) unless the Secretary of State consents to the transfer of the benefit of those provisions.

(3) Oxfordshire Railfreight Limited has the sole benefit of the powers conferred by this Order to carry out the highway works in accordance with the provisions of Parts 2 and 3 of Schedule 14 (protective provisions) unless—

- (a) on application by Oxfordshire Railfreight Limited the Secretary of State consents to the transfer of the benefit of those provisions; or
- (b) the provisions of paragraph 4(6) of Part 2 or paragraph 4(6) of Part 3 of Schedule 14 apply in which case the relevant highway authority shall have the benefit of the powers to carry out the relevant highway works.

(4) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers, operators of the electronic communications code network and other persons affected by the authorised development.

PART 3 STREETS

Street works

8.—(1) The undertaker may for the purposes of the carrying out of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) construct bridges and tunnels;
- (f) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (g) alter the level or increase the width of such kerb, footway, cycle track or verge;
- (h) reduce the width of the carriageway of the street;
- (i) make and maintain crossovers and passing places; and
- (j) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (i).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act and is subject to the provisions of Parts 2 and 3 of Schedule 14 (protective provisions).

Power to alter layout, etc, of streets

9.—(1) Subject to paragraph (2), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the main site and the layout of any street at its junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain crossovers, and passing places.

(2) The powers conferred by paragraph (1) must not be exercised without the consent of the local highway authority but such consent must not be unreasonably withheld and if the local highway authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

Permanent stopping up of streets

10.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up permanently each of the streets specified in columns (1) and (2) of Schedule 4 (streets to be permanently stopped up) to the extent specified, by reference to the letters shown on the *access and rights of way plan*, in column (3) of the Schedule.

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

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

- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the street is as bounded on both sides by land owned by the undertaker.
- (3) No street specified in column (2) of Parts 1 and 2 of Schedule 4 is to be wholly or partly stopped up under this article unless—
 - (a) the new street to be substituted for it, which is specified in column (4) of Parts 1 and 2 of that Schedule, has been completed to the reasonable satisfaction of the relevant street authority and is open for use; or
 - (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).
- (4) 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 any dispute, under Part 1 of the 1961 Act.
- (5) This article is subject to article 34 (apparatus and rights of statutory undertakers in stopped up streets).
- (6) Any stopping up carried out under this article must be carried out in accordance with any relevant provisions of Part 2 and Part 3 of Schedule 14 (protective provisions).

Temporary closure of streets

11.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, 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 (2), prevent all persons from passing along the street.

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

(3) Save as to streets in respect of which the undertaker is the street authority, the undertaker must not temporarily close, alter or divert any street without the consent of the relevant street authority which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(4) Where the undertaker provides a temporary diversion under paragraph (3), the new or temporary alternative route is not required to be of higher standard than the temporarily closed street.

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

(6) If a street authority which receives an application for consent under paragraph (3) accompanied with all relevant information fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was submitted with all relevant information, it is deemed to have granted consent.

Public rights of way - creation, substitution, stopping up and closure of level crossings

12.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—

- (a) stop up each of the public rights of way specified in columns (1) and (2) of Part 1 of Schedule 5 (public rights of way to be permanently stopped up for which a substitute is to be provided) to the extent specified in column (3) of that Part of that Schedule;
- (b) provide the substitute public rights of way described in column (4) of Part 1 of Schedule 5 between the specified terminus points and where specified, on a detailed alignment to be

agreed with the local highway authority at the stage of the authorised development identified in column (5) of that Part of that Schedule;

- (c) temporarily stop up public rights of way specified in columns (2) and (3) of Part 4 of Schedule 5 (public rights of way to be temporarily stopped up) or to the extent agreed with the relevant highway authority and provide substitute temporary public rights of way on an alignment to be agreed with the local highway authority prior to the temporary stopping up of the public right of way concerned; and
- (d) stop up each of the public rights of way specified in columns (1) and (2) of Part 2 of Schedule 5 (public rights of way to be permanently stopped up for which no substitute is to be provided) to the extent specified in column (3) of that Part of that Schedule at the stage of the authorised development identified in column (4) of that Part of that Schedule.

(2) No public right of way specified in columns (1) and (2) of Part 1 of Schedule 5 may be wholly or partly stopped up under this article unless the permanent substitute public rights of way referred to in column (4) of Part 1 of Schedule 5 or an alternative temporary substitute public right of way agreed by the local highway authority has first been provided by the undertaker, to the reasonable satisfaction of the local highway authority.

(3) Any temporary substitute right of way must be maintained by the undertaker with appropriate signage until the completion and opening of the permanent substitute public right of way specified in column (4) of Part 1 of Schedule 5.

(4) The undertaker must in connection with carrying out of the authorised development provide the new public rights of way specified in columns (1) and (2) of Part 3 of Schedule 5 (new public rights of way to be created) to the extent specified in column (3) of that Part of that Schedule at the stage of the authorised development in column (4) of that Part of that Schedule.

(5) Subject to the provisions of this article the level crossing shall be stopped up and discontinued at the relevant stage of the authorised development specified in Parts 1 of Schedule 5.

Accesses

13.—(1) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the relevant highway authority or the relevant street authority as appropriate (such consent not to be unreasonably withheld), form and lay out such means of access (permanent or temporary) 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.

(2) The consent of the relevant highway authority or the relevant street authority as appropriate is not required for the formulation, layout or improvement of a new or existing means of access described in Schedule 1 (authorised development) and carried out in accordance with the relevant provisions of Parts 2 and 3 of Schedule 14 (protective provisions).

(3) If a highway authority or street authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent.

(4) The private means of access as set out in column (2) of Part 1 of Schedule 6 (private means of access to be replaced) may be removed by the undertaker and if removed must be replaced by the means of access as set out in column (3) of Part 1 of Schedule 6 at the stage of the authorised development identified in column (4) of that Part of that Schedule.

(5) The private means of access as set out in column (2) of Part 2 of Schedule 6 (private means of access to be closed for which no substitute is to be provided) may be closed by the undertaker at the stage of the authorised development identified in column (3) of that Part of that Schedule without a substitute being provided.

(6) The undertaker must provide the private means of access as set out in column (2) of Part 3 of Schedule 6 (new private means of access created) at the stage of the authorised development identified in column (3) of that Part of that Schedule.

Maintenance of highway works

14.—(1) The highway works must be completed in accordance with the provisions of Parts 2 and 3 of Schedule 14 (protective provisions).

(2) With effect from the date of the handover certificate referred to in paragraph 7 of Part 2 of Schedule 14 the highway works to which that certificate relates will be maintained by and at the expense of National Highways.

(3) With effect from the date of the final certificate referred to in paragraph 7 of Part 3 of Schedule 14 the highway works to which that certificate relates will be maintained by and at the expense of the local highway authority.

(4) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 6 of Part 2 of Schedule 14 then it shall be deemed to be dedicated as part of the public highway on the issue of that certificate.

(5) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 6 of Part 3 of Schedule 14 then it shall be deemed to be dedicated as part of the public highway on the issue of that certificate.

(6) For the purposes of this article, the definition of “maintain” in article 2 shall not apply and the word “maintain” shall be given its ordinary meaning when applied to highways.

Classification of highways

15.—(1) The new highways described in Schedule 7 (new highways) are to be—

- (a) classified as set out in column (3) of Schedule 7 for the purpose of any enactment or instrument which refers to highways classified as such; and
- (b) provided for the use of the classes of traffic defined in Schedule 4 (classes of traffic for purposes of special roads) to the 1980 Act as set out in column (4) of Schedule 7.

(2) From the date on which the undertaker notifies the Secretary of State that the new highways described in Schedule 7 have been completed as evidenced by issue of the provisional certificate in accordance with paragraph 6 of Part 2 and paragraph 6 of Part 3 of Schedule 14 (protective provisions) or are open for through traffic, whichever is the earliest—

- (a) the body set out in column (5) of Schedule 7 is the highway authority for those highways; and
- (b) the new highways identified as special roads in column (3) of Schedule 7 are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads.

Speed limits

16.—(1) The orders referred to in columns (1) and (2) of Part 1 of Schedule 8 (existing orders) are revoked or varied as set out in column (3) of Part 1 of Schedule 8 upon the event listed in column (4) occurring.

(2) Upon the event listed in column (3) of Part 2 of Schedule 8 (highways subject to 40 mph speed limit) no person is to drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of highway identified in column (2) of Part 2 of Schedule 8.

(3) Upon the event listed in column (3) of Part 3 of Schedule 8 (highways subject to 50 mph speed limit) no person is to drive any motor vehicle at a speed exceeding 50 miles per hour in the lengths of highway identified in column (2) of Part 3 of Schedule 8.

(4) Upon the event listed in column (3) of Part 4 of Schedule 8 (derestricted highways) the lengths of highway specified in column (2) of Part 4 of Schedule 8 shall cease to be restricted highways for the purpose of section 81 of the 1984 Act.

(5) During the period specified in column (4) of Part 5 of Schedule 8 (temporary speed limits) no person is to drive any motor vehicle at a speed exceeding the limit specified in column (2) of Part 5 of Schedule 8 along the lengths of highway specified in column (3) of Part 5 of Schedule 8.

(6) Without limiting the scope of the specific powers conferred by paragraph (5) but subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation, or maintenance of the authorised development, impose a temporary speed limit either at all times or at times, on days or during such periods, and on such highways as may be specified by the undertaker.

(7) The undertaker must not exercise the powers in paragraph (5) unless it has given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority.

(8) The speed limits imposed by this Order are deemed to have been imposed by an order under the 1984 Act and—

- (a) have the same effect; and
- (b) may be varied by the relevant traffic authority in the same manner,

as any other speed limit imposed by an order under that Act.

(9) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011^(a) when used in accordance with regulation 3(5) of those Regulations.

Traffic regulation

17.—(1) [Revocation of existing orders – Part 1 of Schedule 9]

(2) Subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation, or maintenance 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, parking, waiting, loading or unloading of vehicles on any road;
- (c) suspend or authorise the use as a parking place of any highway;
- (d) make provision as to the direction or priority of vehicular traffic on any highway; and
- (e) permit or prohibit vehicular access to any highway,

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

(3) The undertaker shall not exercise the powers in paragraph (2) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority; and
- (b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 7 days of the relevant traffic authority's receipt of notice of the undertaker's intention under sub-paragraph (a).

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

- (a) have effect as if duly made by, as the case may be—
 - (i) the relevant traffic authority as a traffic regulation order under the 1984 Act; or
 - (ii) the local highway authority as an order under section 32 of the 1984 Act^(b); and

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

^(b) 1984 c. 27. Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51). There are other amendments to section 32 which are not relevant to this Order.

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

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (3) at any time.

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

(7) If the relevant traffic authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (3) that is accompanied by all relevant information the relevant traffic authority shall be deemed to have given consent.

Clearways and no waiting

18.—(1) Subject to paragraphs (3) and (4), following the event specified in column (3) of Part 2 of Schedule 9 (clearways), no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait on any part of a carriageway specified in columns (1) and (2) of Part 2 of Schedule 9, other than a lay-by.

(2) Subject to paragraphs (3) and (5), following the event specified in column (3) of Part 3 of Schedule 9 (no waiting at any time), no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait at any time on any day on the sides of the carriageway specified in columns (1) and (2) of that Part of that Schedule or its adjacent verge.

(3) Nothing in paragraphs (1) and (2) applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of the carriageway or verge, 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 carriageway or verge;

(iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the carriageway or verge 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 to the Communications Act 2003(a); or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

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

(ii) in the service of a local authority, National Highways, a safety camera partnership or the 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(b); or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(c); 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.

(a) 2003 c. 21.

(b) 1991 c. 56.

(c) 2000 c. 26.

(4) Nothing in paragraph (1) applies to any vehicle selling or dispensing goods to the extent that 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 dispersed.

(5) Nothing in paragraph (2) applies—

- (a) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary—
 - (i) to enable a person to board or alight from the vehicle;
 - (ii) to enable goods to be loaded on to or unloaded from the vehicle; or
 - (iii) to enable goods to be sold from the vehicle provided such goods are immediately delivered at, or taken into, premises adjacent to the vehicle from which the sale is effected;
- (b) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary to enable that vehicle, if it cannot conveniently be used for such purpose without waiting on such verge, to be used in connection with any building operation or demolition, the removal of any obstruction or potential obstruction to traffic, the maintenance, improvement or reconstruction of such verge or of a carriageway immediately adjacent to such verge or the erection, laying, placing, maintenance, testing, alteration, repair or removal of any structure, works or apparatus in, on, under or over that verge or carriageway; or
- (c) to a vehicle waiting on any verge specified in paragraph (2) while any gate or other barrier at the entrance to premises to which the vehicle requires access or from which it has emerged is opened or closed.

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

Motor Vehicle Restrictions

19.—(1) No person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle, the maximum gross weight of which exceeds 7.5 tonnes, to enter or proceed within the zone specified in column (2) of Part 4 of Schedule 9 (environmental weight limit) between the points specified in column (3) of Part 4 of Schedule 9 following the event specified in column (4) of Part 4 of Schedule 9.

(2) The restriction referred to in paragraph (1) does not apply in respect of—

- (a) anything done in accordance with any restriction or requirement indicated by traffic signs placed by or on behalf of the police;
- (b) vehicles being used—
 - (i) in the service of a local authority or water authority in pursuance of statutory powers or duties;
 - (ii) for police ambulance, fire and rescue authority or traffic officer purposes;
 - (iii) for the purpose of agriculture on any land adjacent to the restricted roads;
 - (iv) for the purpose of gaining access to or leaving any land and/or premises situated in or adjacent to the restricted roads or any roads accessible only therefrom;
 - (v) in connection with the carrying out on land or any premises situated on or adjacent to the restricted roads of any building, industrial or demolition operation or the removal of any obstruction to traffic for the maintenance, improvement, reconstruction, cleansing or lighting of the road or any roads accessible only therefrom, or the laying, erection, alteration, or repair of any sewer under the restricted roads or of any main pipe or apparatus for the supply of gas, water or electricity or of any electronic communications apparatus thereunder or thereon, or for the placing, maintenance or removal of any traffic signs thereon; or
 - (vi) for public transport.

(3) No person, except upon the direction or with the permission of a police officer or traffic officer in uniform is to cause or permit any vehicle to proceed in the manner specified in column (1) of Part 5 of Schedule 9.

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

Agreements with highway authorities

20.—(1) A relevant highway authority and the undertaker may enter into agreements related to the authorised development with respect to—

- (a) the construction, and/or maintenance of any new highway, including any structure carrying the highway over the existing railway and any railway authorised by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any highway under the powers conferred by this Order;
- (c) the maintenance of landscaping within or adjacent to a highway constructed as part of the highway works;
- (d) the maintenance of highway related assets which fall outside of the extent of highway maintained by a relevant highway authority;
- (e) any stopping up, alteration or diversion of a highway as part of or to facilitate the authorised development;
- (f) the carrying out in the highway of any of the works referred to in article 8 (street works); or
- (g) the erection of signage in connection with the authorised development.

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

21.—(1) Subject to paragraphs (3), (4), (5) and (6) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

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

(a) 1991 c.56. Section 106 was amended by section 35(1) and (8) and section 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43) and, sections 36(2) and 99 of the Water Act 2003 (c. 37) (subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(4) No water may be discharged into a watercourse that flows into the highway drainage system without the consent of the relevant highway authority and such consent may be given subject to such terms and conditions as the relevant highway authority consider appropriate such consent not to be unreasonably withheld or delayed.

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016(a).

(8) All expressions excluding “watercourse” and “public sewer or drain”, which are used both in this article and in the Water Resources Act 1991 have the same meaning as in the Act.

(9) If a person who has received an application for consent under paragraph (3) or approval under paragraphs (4), (5) or (6)(a) fails to notify the undertaker of its decision within 42 days of receiving the application submitted with all relevant information, that person is deemed to have granted consent or given approval as the case may be.

Authority to survey and investigate the land

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

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

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 28 days’ notice has been served on every owner, who is not the undertaker, and occupier of the land.

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

- (a) must, if so required, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

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

but such consent must not be unreasonably withheld.

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

(a) S.I. 2016/1154. There are amendments to regulation 12 which are not relevant to this Order.

(6) If either a highway authority or a street authority which has received an application for consent under paragraph (4) that includes all relevant information fails to notify the undertaker of its decision within 42 days of receiving the application the authority is deemed to have granted the consent.

PART 5 POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) As from the date on which a notice to treat and notice of entry is served under Part 1 of the 1965 Act or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all leases, licences, easements, rights, trusts, liberties, privileges, advantages, restrictions, covenants and incidents to which it was previously subject.

(3) This article is subject to article 25(2) (compulsory acquisition of rights), article 27 (time limit for exercise of authority to acquire land compulsorily), and article 33(9) (temporary use of land for carrying out the authorised development).

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

Compulsory acquisition of land - incorporation of the mineral code

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

- (a) paragraph 8(3) is not incorporated;
- (b) for the “acquiring authority” substitute “the undertaker”;
- (c) for “undertaking” substitute “authorised development”; and
- (d) for “compulsory purchase order” substitute “this Order”.

Compulsory acquisition of rights and imposition of restrictive covenants

25.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 11 (land in which only new rights, etc. may be acquired), the undertaker’s powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of such restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) As from the date on which any new right or restrictive covenant is vested in the undertaker, all rights, easements, restrictions, trusts and incidents to which the land over which any new right or restriction is acquired was previously subject are discharged, so far as their continuance would be inconsistent with the exercise of that new right.

(4) Subject to section 8 (other provisions as to divided land) of, and Schedule 2A (counter notice requiring purchase of land not in notice to treat) to, the 1965 Act (as substituted by Schedule 12 (modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants)), where the undertaker acquires a right over land or the benefit of a

restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 12 has effect for the purpose of modifying the enactments referred to in that Schedule in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(6) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(7) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

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

Power to override easements and other rights

26.—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether 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 use of the land arising by virtue of a contract.

(2) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(3) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(4) Subject to article 38 (no double recovery) in respect of any interference, breach, extinguishment, abrogation or discharge under this article, compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provisions as to compensation for injurious affection) of the 1965 Act^(a); 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 in respect of injurious affection 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.

(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) Nothing in this article is to be construed as restricting the entitlement of any person to compensation.

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

- (a) is liable to pay compensation; and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(a) 1965 c. 56. Section 10 was amended by article 5(1) and (2) of, and paragraphs 59 and 63 of Schedule 1 to, S.I. 2009/1307.

(8) For the purposes of this article, “authorised activity” means—

- (a) the erection, construction, carrying out or maintenance of any building or works on land;
- (b) the erection, construction or maintenance or anything in, on, over or under land; or
- (c) the use of any land.

(9) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any rule or principle applied to the construction of section 10 of the 1965 Act applies to the construction of paragraph (2) with any necessary modifications.

Time limit for exercise of authority to acquire land compulsorily

27.—(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 of the 1965 Act (as modified by article 32 (modification of Part 1 of the 1965 Act)); and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration) as applied by article 31 (application of the 1981 Act).

(2) The authority conferred by article 32 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession was taken before the end of that period.

Private rights

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

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights and restrictions 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) as 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 on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker within the Order limits which are required to be interfered with or breached for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation in accordance with the terms of section 152

(compensation where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 36 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of rights over land 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.

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

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

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

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

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

Rights under or over streets

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

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

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

(a) any subway or underground building; or

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

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

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

(6) Paragraph (1) does not apply to any street which is part of the strategic road network.

Application of the 1981 Act

- 30.**—(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) there is substituted—
- “(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 4 (execution of declaration), for subsection (1) substitute—
- “(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in the case of land or a right that they are authorised to acquire for the benefit of a third party in the third party in question, from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 is completed).”
- (5) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “and this subsection” to the end.
- (6) Omit section 5A (time limit for general vesting declaration).
- (7) In section 5B (extension of time limit during challenge) for subsection (1) there is substituted—
- “(1) If an application is made under section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 27 of the Oxfordshire Strategic Rail Freight Interchange and Highways Order 202X is to be extended by—
- (a) a period equivalent to the period beginning with the day the application is made and ending on the day it is withdrawn or finally determined; or
- (b) if shorter, one year.”
- (8) In section 6 (notices after execution of declaration) for subsection (1)(b) there is substituted—
- “(1)(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008.”
- (9) In section 7 (constructive notice to treat) in subsection (1)(a), “(as modified by section 4 of the Acquisition of Land Act 1981)” is omitted.
- (10) In Schedule 2A (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2) and 14(2).
- (11) 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 (as modified by article 32 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Modification of the 2017 Regulations

- 31.**—(1) Schedule 1 to the 2017 Regulations is modified as follows.
- (2) In paragraph (3) of Form 1, after “from the date on which the service of notices required by section 6 of the Act is completed”, insert—
- “(1A) The [*insert land or rights or both*] described in Part [*insert number*] of the Schedule hereto as being for the benefit of third parties and more particularly delineated on the plan annexed hereto vests in the third parties in question as from the end of the period of [*insert period of 3 months or longer*] from the date on which the service of notices required by section 6 of the Act is complete.”

(3) References to Form 2 to “in themselves” is substituted with “in themselves and any identified third parties”.

(4) In paragraph (b) of the notes on use of Form 2—

(a) after “Insert the name of the authority” insert “and where the context requires insert a reference to third parties”; and

(b) omit “Thereafter rely on that definition wherever “b” appears in the text”.

Modification of Part 1 of the Compulsory Purchase Act 1965

32.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(a) (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 26 of the Oxfordshire Strategic Rail Freight Interchange and Highways Order 202X”.

(3) 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 27 of the Oxfordshire Strategic Rail Freight Interchange and Highways Order 202X”.

(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) 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 article 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development) of the Oxfordshire Strategic Rail Freight Interchange and Highways Order 202X.”

Temporary use of land for carrying out the authorised development

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

(a) enter on and take temporary possession of—

(i) the land specified in column (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights or restrictive covenants only) and no declaration has been made under section 4 of the 1981 Act;

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

(c) construct any permanent or temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;

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

- (d) use the land for the purposes of a working site with access in connection with the authorised development; and
- (e) construct or carry out any works (including mitigation works or operations) or use the land for the purpose of the authorised development.

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

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

- (a) in the case of land specified in paragraph (1)(a)(i) above, after the end of the period of 1 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 10; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of 1 year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land or has otherwise acquired the land subject to temporary possession.

(4) Before giving up possession of the land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land; but the undertaker is not required to—

- (a) remove any drainage works installed by the undertaker under this article;
- (b) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to street works);
- (c) restore the land on which any permanent works have been constructed under paragraph (1);
- (d) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
- (e) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development;
- (f) replace a building removed under this article; or
- (g) remove or reposition any apparatus belonging to statutory undertakers or any necessary mitigation works.

(5) Any dispute as to the satisfactory removal of temporary works and restoration of the land under paragraph (4) does not prevent the undertaker from giving up possession 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 provisions of any power conferred by this article.

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

(8) Subject to article 38 (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 carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Unless provided for in the book of reference and article 24 (compulsory acquisition of land) the undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

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

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

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land.

(13) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of any of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment.

Temporary use of land for maintaining the authorised development

34.—(1) Subject to paragraph (2) and Parts 2 and 3 of Schedule 14 (protective provisions), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

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

(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 provisions of this article.

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

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

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

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

(11) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first occupied for commercial use or becomes operational.

(12) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of any of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment.

Statutory undertakers

35.—(1) Subject to Schedule 14 (protective provisions), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers;
- (b) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and at other like bodies within the Order limits; and
- (c) extinguish the rights of, remove, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order limits.

(2) In this article, a reference to statutory undertaker includes a reference to a public communications provider (as defined in article 37 (4) (recovery of costs of new connections)).

Apparatus and rights of statutory undertakers in stopped up streets

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

(2) Where a street is stopped up under article 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 statutory 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 statutory 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 that new apparatus involves additional costs which would not have been incurred if the apparatus had been of the same type, capacity or land at the same depth as the existing

apparatus, then the amount payable to the statutory utility is to be reduced by a sum equivalent to those additional costs.

(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)), 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 statutory utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

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

- (a) the allowable costs of the relocation works must 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 must be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

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

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

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

Recovery of costs of new connections

37.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 35 (apparatus and rights of statutory undertakers in stopped up streets) 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 35, 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 36 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

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

- (a) “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

No double recovery

38. 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.

Guarantees in respect of payment of compensation

39.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place—

- (a) a guarantee approved by the relevant planning authority in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose approved by the relevant planning authority.

(2) The provisions are—

- (a) article 23 (compulsory acquisition of land);
- (b) article 24 (compulsory acquisition of land - incorporation of the mineral code);
- (c) article 25 (compulsory acquisition of rights);
- (d) article 26 (private rights);
- (e) article 27 (rights under or over streets);
- (f) article 33 (temporary use of land for carrying out authorised development);
- (g) article 34 (temporary use of land for maintaining authorised development); and
- (h) article 35 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order must be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

PART 6

MISCELLANEOUS AND GENERAL

Operation and use of railways

40. The undertaker may operate and use the railway comprised in the authorised development and any other elements of the authorised development as a system, or part of a system, of transport for the carriage of goods.

Operational land for the purposes of the 1990 Act

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

Charges

42. The undertaker may demand, take or recover or waive such charges for carrying goods on the railway comprised in the authorised development, and for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

Defence to proceedings in respect of statutory nuisance

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

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(d);
- (b) is a consequence of complying with a requirement of this Order and that it cannot be reasonably avoided;
- (c) is a consequence of the construction of the authorised development before completion of construction and that it cannot reasonably be avoided; or
- (d) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in compliance with a requirement of this Order and that it cannot be reasonably avoided.

(2) Section 61(9) of the Control of Pollution Act 1974, does not apply where the consent relates to the use of the premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Felling or lopping of trees and removal of hedgerows

44.—(1) Subject to paragraphs (4), (5) and (6) the undertaker may fell or lop any tree, shrub or hedgerow within 15 metres of any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, shrub or hedgerow—

- (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 not cause unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person who suffers loss 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, must be determined under Part 1 of the 1961 Act.

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

(b) 1990 c. 43. Section 79(1) was amended by sections 101 and 102 of the Clean Neighbourhood and Environment Act 2005 (c. 16). There are other amendments to the Act which are not relevant to this Order.

(c) 1990 c. 43.

(d) 1974 c. 40. Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55). Section 61(9) was amended by Schedule 24 to the Environment Act 1995 (c. 25), and section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1974 Act which are not relevant to this Order.

(4) The provisions of this article do not apply without the agreement of the local planning authority to any tree or hedgerow identified to be retained in [the landscaping scheme] approved under requirement [].

(5) The provisions of this article do not apply without the agreement of the relevant highway authority to any tree or hedgerow within a highway.

(6) The undertaker may fell or lop or cut back any tree or shrub identified in Schedule 13 (felling and lopping of trees or shrubs subject to a tree preservation order) or any other tree or shrub which is subject to a tree preservation order with the prior approval of the local planning authority, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(7) In carrying out any activity authorised by paragraph (6)—

(a) the undertaker shall 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; and

(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

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

Protective provisions

45. Schedule 14 (protective provisions) to this Order has effect.

Governance of requirements and governance of protective provisions relating to highway works

46.—(1) When in any requirement or in Parts 2 and 3 of Schedule 14 (protective provisions) approval or agreement is required of, or with, anybody in relation to the detail, carrying out or use of the authorised development (including for the avoidance of doubt the approval of details or plans under the requirements) such approval or agreement must not be given if it would permit development which would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations^(a).

(2) When any details, plans or other matters have been agreed or approved by the relevant planning authority under a requirement or the relevant highway authority under a requirement or Parts 2 and 3 of Schedule 14 then they may subsequently be amended by agreement with the relevant planning authority or relevant highway authority as the case may be provided that no amendments to those details, plans or other matters may be approved where such amendments would permit development outside the parameters of the authorised development referred to in article 4 (parameters of authorised development) or would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.

(3) Where a consent, agreement or approval is required or requested by the undertaker under a requirement then the procedure set out in Part 2 of Schedule 2 (procedure for approvals etc. under requirements) for obtaining such consent, agreement or approval, and appealing against the refusal or failure to approve or refuse such consent, agreement or approval, shall apply.

Disapplication, application and modification of legislative provisions

47.—(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 of the authorised development—

(a) S.I. 2017/578 as amended by S.I. 2017/1012.

- (a) 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 authority) to the Water Resources Act 1991(a);
- (b) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(b) in relation to watercourses for which Oxfordshire County Council is the drainage board concerned;
- (c) section 32 (variation of awards) of the Land Drainage Act 1991(c);
- (d) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(d); and
- (e) section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981(e).

(2) The provisions of the Neighbourhood Planning Act 2017(f) do not apply in so far as they relate to the temporary possession of land under articles 32 (temporary use of land for carrying out the authorised development) and 33 (temporary use of land for maintaining the authorised development) of this Order.

(3) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order shall be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (development without development consent) and 161 (breach of terms of order granting development consent) of the 2008 Act(g).

(4) Regulation 4 (requirement for consent) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007(h) does not apply to any advertisement erected in the location and in accordance with the parameters shown on the parameters plan.

(5) This Order does not constitute a planning permission for the purpose of Part 11 of the 2008 Act (community infrastructure levy) notwithstanding the definition of planning permission contained within article 5 of the 2010 Regulations (meaning of planning permission).

(6) Schedule 15 (miscellaneous controls) to this Order which makes provision applying/modifying and excluding statutory provisions which relate to matters for which provision may be made by this Order has effect.

(7) Paragraphs (1) to (6) only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act.

Certification of plans and documents

48.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the documents identified in Schedule 16 (certification of plans and documents) for certification that they are true copies of the documents referred to in this Order.

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- (a) 1991 c. 57. Paragraph 5 was amended by section 106 of the Natural Environment and Rural Communities Act 2006, section 31 of, and paragraphs 40 and 49 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29), and sections 84 and 146(1) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23). Paragraph 6 was amended by section 105 of, and paragraph 6 of Schedule 15 to, the Environment Act 1995 (c. 25), sections 233(1), 224 and 321 of, and paragraphs 20 and 24 of Schedule 16 and Part 5(b) of Schedule 22 to, the Marine and Coastal Access Act 2009 (c. 23). Paragraph 6A was inserted by section 103(3) of the Environment Act 1995 (c. 25).
 - (b) 1991 c. 59. Section 23 was amended by section 31 of, and paragraphs 25 and 32 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29).
 - (c) 1991 c. 59.
 - (d) 1991 c.59. Section 66 was amended by section 31 of, and paragraphs 25 and 38 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c. 21).
 - (e) 1981 c. 69. Section 28E was amended by section 105(1) of, and paragraphs 79 and 80 of Part 1 of Schedule 11 to, Natural Environment and Rural Communities Act 2006 (c. 16).
 - (f) 2017 c. 20.
 - (g) 2008 c. 29. Sections 160 and 161 were amended by regulation 4(1) of, and paragraph 41 of Part 1 of Schedule 4 to, S.I. 2015/664. Section 161 was also amended by section 112(2) of, and paragraph 4 of Part 1 of Schedule 8 to, the Marine and Coastal Access Act 2009 (c. 23).
 - (h) S.I. 2007/783.

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

Service of notices

49.—(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 (6) to (8), by electronic transmission.

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

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

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

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

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of that 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) 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 may not be less than 7 days after the date on which the notice is given.

(a) 1978 c. 30

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

(10) In this article—

“electronic transmission” means a communication transmitted—

- (a) by means of electronic communications network; or
- (b) by other means but while in electronic form; and

“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

50.—(1) Subject to paragraph (2) except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order, other than a difference which falls to be determined by the tribunal must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party, after giving notice in writing to the other, by—

- (a) in the case of matters pertaining to land and the surveying of such land, the president of the Royal Institute of Chartered Surveyors;
- (b) in the case of matters of legal interpretation, the president of the Law Society; and
- (c) in the case of all other matters the president of the Institute of Civil Engineers.

(2) Paragraph (1) does not apply to any decisions of the Secretary of State made pursuant to the provisions of this Order.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

SCHEDULES

SCHEDULE 1

AUTHORISED DEVELOPMENT

PART 1

NSIP 1: THE CONSTRUCTION OF A RAIL FREIGHT INTERCHANGE

In the County of Oxfordshire and the District of Cherwell

Work No. 1

Within the area of land described as Work No. 1 on the works plans—

[Chiltern Main Line works including connection to private rail infrastructure]

Work No.2

Within the area described on the works plans as Work No. 2—

[Private rail infrastructure]

Work No.3

Within the area of land described on the works plans as Work No. 3—

[Construction of Rail Terminal]

Work No. 4

Within the area of land described as Work No. 4 –

[Construction of area for use as extended rail terminal or warehousing]

Work No. 5

Within the area of land described as Work No. 5

[Construction of rail sidings to serve warehousing direct]

Work No.6

Within the area of land described as Work No. 6 on the works plans—

[The construction of rail served warehousing]

Work No. 7

Within the area of land described as Work No. 7 on the works plans—

[The construction of private estate roads on the main site]

Work No. 8

Within the area of land described as Work No. 8 on the works plans

[The provision of hard and soft landscape works within the main site and works to the rights of way network]

Work No. 9

Within the area of land described as Work No. 9 on the works plans—

[Construction of principal access for the main site]

Work No. 10

Within the area of land described as Work No.10 on the works plans—

[Construction of the Heyford Park Link Road]

Work No. 11

Within the area of land described as Work No. 11 on the works plans—

[Reconfiguration and upgrading of the Camp Road and Chilgrove Drive junction]

PART 2

NSIP 2: CONSTRUCTION OF NEW LENGTHS OF MOTORWAY

In the County of Oxfordshire and the District of Cherwell

Work No. 12

Within the area of land described as Work No. 12 on the works plans

[Construction of new lengths of motorway as part of M40 J10 Highway Improvement Works]

PART 3

NSIP 3: ALTERATION OF ALL PURPOSE TRUNK ROAD

In the County of Oxfordshire and the District of Cherwell

Work No. 13

Within the area of land described as Work No. 13 on the works plans

[Alterations to A43 as part of M40 J10 Highway Improvement Works]

PART 4

ASSOCIATED DEVELOPMENT

In the County of Oxfordshire and the District of Cherwell

Associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising—

Work No. 14

Within the area of land described as Work No. 14 on the works plans

[Relocation of Severn Trent Green Power In Vessel Composting Facility]

Work No. 15

Within the area of land described as Work No. 15 on the works plans

[Provision of estate facilities and management offices in Central Hub]

Works No. 16, 17, 18 and 19

Within the area of land described as Works No. 16 – 19 inclusive

[Other highway works as part of the M40 J10 Highway Improvement Works and works to the rights of way network]

Work No. 20

Within the area of land described as Work No. 20 on the works plans—

[Construction of Ardley Bypass and works to the rights of way network]

Work No. 21

Within the area of land described as Work No. 21 on the works plans—

[Other highway works in the vicinity of Ardley Bypass and works to the rights of way network arising from the construction of the Ardley Bypass and closure of level crossing]

Work No. 22

Within the area of land described as Work No. 22 on the works plans—

[Construction of a bus gate on the B4030]

Work No. 23

Within the area of land described as Work No. 23 on the works plans—

[Construction of the Middleton Stoney Relief Road and works to the rights of way network]

Work No. 24

Within the area of land described as Work No. 24 on the works plans—

[Construction of a footway/cycleway alongside the B4030]

Work No. 25

Within the area of land described as Work No. 25 on the works plans—

[Other highway works along the B430]

Work No. 26

Within the area of land described as Work No. 26 on the works plans—

[Construction of a turning head on Quarry Cottages and works to the rights of way network]

Further works

The following further works provided that such works do not give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA regulations—

[]

SCHEDULE 2 REQUIREMENTS

PART 1 REQUIREMENTS

1. The draft requirements (which are similar to planning conditions) will be discussed and progressed with the local planning and highway authorities and so full draft requirements are not contained in this draft version of the DCO. It is currently envisaged that the requirements will deal with the following matters—

- (a) Time limit for the commencement of the authorised development.*
- (b) Phasing.*
- (c) The need for approval of detailed design.*
- (d) Approval of a detailed construction and environmental management plan.*
- (e) Approval of a detailed landscape and ecological management plan.*
- (f) Rail provision.*
- (g) Construction hours.*
- (h) Archaeology and cultural heritage.*
- (i) Air quality.*
- (j) Ground conditions and earthworks.*
- (k) Biodiversity.*
- (l) Lighting.*
- (m) Noise.*
- (n) Building sustainability.*
- (o) Transport and highways.*
- (p) Water and flood risk.*
- (q) Waste management.*

PART 2

[PROCEDURE FOR APPROVALS AND APPEALS ETC UNDER REQUIREMENTS]

SCHEDULES 3 – 9

[Schedules dealing with Highway Orders referred to in Articles 8 – 20]

SCHEDULES 10 – 12

[Schedules dealing with aspects of Compulsory Acquisition referred to in Articles 23 – 39]

SCHEDULE 13

[Schedule dealing with felling etc of trees]

SCHEDULE 14

[Schedule containing (1) the equivalent of agreements under s.278 of the Highways Act 1980 in respect of roads governed or to be governed by National Highways and Oxfordshire County Council and (2) provisions for the protection of third parties whose assets may be affected by the development]

SCHEDULE 15

MISCELLANEOUS CONTROLS

[Schedule applying, modifying or disapplying existing statutory provisions]

SCHEDULE 16

Article [46]

[Schedule with list of certified documents]

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Oxfordshire Railfreight Limited to construct, operate and maintain, the new Oxfordshire Strategic Rail Freight Interchange together with the construction and alteration of highways and associated development. The undertaker is authorised by the Order to acquire compulsorily land and rights over land. The Order also authorises the making of alterations to the highway network, stopping up and diversion of public rights of way and the discharge of water.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 46 (certification of plans and documents) of this Order may be inspected free of charge at the offices of Cherwell District Council at Bodicote House Bodicote Banbury Oxfordshire OX15 4AA.