



EXPLANATORY NOTES

High Speed Rail (London – West Midlands) Act 2017

Chapter 7

£14.25

HIGH SPEED RAIL (LONDON - WEST MIDLANDS) ACT 2017

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the High Speed Rail (London - West Midlands) Act 2017 (c. 7) which received Royal Assent on 23 February 2017.

- These Explanatory Notes have been produced by the Department for Transport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 This Act confers the powers required to construct the first phase – “Phase One” - of a proposed new national high speed rail network, “High Speed 2” (or “HS2”). Phase One will involve the construction of new railway lines (one track in each direction) between London and the West Midlands. The terminals will be in central London (Euston) and in central Birmingham (Curzon Street) and there will be intermediate stations in West London (Old Oak Common) and at Birmingham Airport. The new lines will connect with the existing conventional railway network at Handsacre in the West Midlands.

Policy background

- 2 The 2010 Coalition Programme for Government included a commitment to establish a national high speed rail network, and to do so in phases. Following a period of consultation and an appraisal of sustainability, in January 2012 the Secretary of State for Transport presented to Parliament the Command Paper “High Speed Rail: Investing in Britain’s Future- Decisions and Next Steps” (CM 8247) (“the 2012 Command Paper”). In that paper, the Secretary of State decided to promote a Y-shaped high speed rail network known as “HS2” linking London, the West Midlands, Leeds and Manchester with intermediate stations in the East Midlands and Sheffield.
- 3 In the 2012 Command Paper the Secretary of State decided upon a detailed route for Phase One of High Speed 2. The Government also announced that it intended to introduce a hybrid Bill for this phase of HS2 by the end of 2013. This would grant the powers required to construct and operate the first phase of HS2, and give Parliament an opportunity to hear representations from affected parties.
- 4 On 9 July 2013, the Secretary of State for Transport issued statutory safeguarding directions to local planning authorities for the Phase One route. These directions provide that the authorities along the proposed route must consult High Speed Two (HS2) Ltd when a planning application is received for significant development within a zone protected for HS2. The directions give the Secretary of State the ability to refuse or call-in for his determination applications which may conflict with proposed plans for Phase One of High Speed 2. The directions also allow residents living in the safeguarding zone to serve the Secretary of State for Transport with a statutory blight notice if they want him to purchase their property. Further details of the safeguarding directions can be found on the HS2 Ltd website.
- 5 In addition, the High Speed Rail (Preparation) Act 2013 (“the 2013 Act”) authorises the Secretary of State to incur expenditure in preparation for the construction of a high speed rail network. The 2013 Act was intended to ensure that, following enactment of this Act, the development of the proposed network might proceed without delay. The other provisions of the 2013 Act include a power for the Secretary of State to incur expenditure in providing compensation in respect of property likely to be affected by the construction of the proposed network.
- 6 The Government proposes to commence construction of Phase One of High Speed 2 in 2017. This phase would be completed and operational by 2026. The Government plans to introduce a hybrid Bill providing for Phase 2a, to accelerate the introduction of services to Crewe by 2027, and a further Bill for the rest of Phase Two, with the extension of the network to be open by 2033.
- 7 Further information about HS2 and high speed rail can be found in the Parliamentary research paper on the subject, which can be accessed at

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<http://www.parliament.uk/briefing-papers/SN00316>.

- 8 This Act is a hybrid Act. This means it is of general application, but it contains provisions which have a different legal effect on the private interests of particular persons. In procedural terms, this means it was considered as a Public Bill, but was treated as similar to a Private Bill during certain stages of its passage through Parliament. The hybrid Bill procedure gives those persons who are directly and specially affected an opportunity to petition against the Bill and to be heard in Select Committee. This Bill was committed to a Select Committee following a motion in the House of Commons on 29 April 2014. 2,586 petitions against the Bill were received. The Committee started sitting in July 2014 and concluded hearing petitioners in February 2016. The Committee's Second Special Report, summarising their decisions, can be found at <http://www.publications.parliament.uk/pa/cmhs2/129/129.pdf>.
- 9 During the Select Committee stage, five sets of proposed changes to the scheme outlined in the Bill, known as "Additional Provisions", were introduced. These changes were either requested by petitioners or instigated by the Government and mainly consist of changes to the land requirements described in the plans and sections that accompany the Bill, or to the details in its Schedules. The Additional Provisions were accepted by the Select Committee and included in the Bill. A number of changes to the clauses of the Bill were also proposed to the Select Committee, and accepted by them.
- 10 The Bill was then committed to a Public Bill Committee which sat in March 2016 and made no amendments to the Bill. The Bill passed Report and Third Reading in the House of Commons on 23 March 2016. It passed its First Reading in the House of Lords on the same day after which those directly and specially affected by the scheme could petition against the Bill.
- 11 In the House of Lords, 822 petitions against the Bill were received. The Committee started sitting in May 2016 and concluded its sittings in December that year, publishing its Special Report on 15 December 2016. The Report can be found [here](#) and the Government's response can be found [here](#). The Committee amended the Bill to delete part of what was then in clause 48, and two parcels of land that were to be permanently acquired in the parish of Bickenhill in Solihull. The Committee also accepted Government amendments to correct some mislabellings and other minor errors.
- 12 The Bill then proceeded to Grand Committee, on 10 and 12 February 2017, where Government amendments consequential on the Housing and Planning Act 2016 were accepted, along with other minor clarifying amendments. At the Report Stage, on 24 January 2017, Government amendments in relation to Traffic Regulation Orders were accepted. The Bill had its Third Reading on 31 January 2017. The amendments made in the House of Lords were accepted by the House of Commons on 20 February 2017.

Legal background

- 13 This High Speed Rail (London - West Midlands) Act 2017 will form part of the legislative authority for the construction of the high speed rail network. The Act provides the legislative authority for the construction of the first phase of the network from London to West Midlands.

Territorial extent and application

- 14 The provision made by the Act for the acquisition of land and the authorisation of works is local in nature. The new high speed rail lines forming Phase One of High Speed 2 are to be situated wholly in England.
- 15 However, as with the Crossrail Act 2008, the Channel Tunnel Rail Link Act 1996 and other hybrid Acts, this Act does not expressly limit its territorial extent. This means that the Act extends to the United Kingdom.
- 16 At introduction this Act contained provisions that required a legislative consent motion that has been passed by the Scottish Parliament. The provisions relate to the reserved matter of cross-border railways but alter the executive competence of the Scottish Ministers. Some of the services using Phase One of High Speed 2 will run to and from Scotland, albeit on the existing conventional rail lines and at normal speed from the West Midlands. Section 52 confers on the Scottish Ministers an order-making power to authorise works in Scotland which may be required for Phase One purposes – for example to extend train platforms so as to accommodate the larger trains. Also section 55, which relates to the exercise of rights of entry to carry out surveys or investigations for future phases of HS2, confers a role on the Scottish Ministers in relation to authorising works under section 54 (rights of entry for further high speed rail works). Such works could include, for example, boring holes to investigate minerals, or placing apparatus on land.
- 17 None of the provisions contained in this Act will have an impact upon matters that have been devolved to the National Assembly for Wales or the Northern Ireland Assembly.

Commentary on provisions of the Act

Works

Section 1: Power to construct and maintain works for Phase One of High Speed 2

- 18 The primary purpose of the Act is to authorise the construction of Phase One of High Speed 2. The provisions in section 1 allow the nominated undertaker to carry out the construction and maintenance of the principal works for this (known as the scheduled works), further detail of which can be found in Schedule 1.

Section 2: Further provision about works

- 19 Subsection (1) allows the nominated undertaker to carry out ancillary works within the Act limits (an expression which is defined in section 68(2)). The types of works which may be undertaken, in connection with the railway, are outlined in subsections (1) and (2).
- 20 Subsection (3) allows the nominated undertaker to carry out, within the Act limits, landscaping or other mitigation works to reduce the impact of construction, maintenance or operation of the Phase One works, and to undertake works which are intended to benefit or protect land affected by the Phase One works.
- 21 Subsection (4) introduces Schedule 2, which contains additional works powers. Details of these can be found below.
- 22 Subsection (5) authorises the nominated undertaker to carry out the electric line works that are specifically authorised by the Act and introduces Schedule 3.

Section 3: Highways

- 23 Subsection (1) requires the nominated undertaker to seek the consent of any relevant strategic highways company before carrying out works in relation to a highway.
- 24 Subsection (2) introduces Schedule 4, which contains provisions relating to highways. More details about this can be found below.

Compulsory acquisition of land

Section 4: Power to acquire land compulsorily

- 25 Subsection (1) gives the Secretary of State powers of compulsory acquisition over the land shown within the limits of deviation and the limits of land to be acquired or used on the plans accompanying this Act. The land may only be acquired if it is needed "for Phase One purposes". This expression is defined in section 67.
- 26 Subsection (2) introduces Schedule 5 which makes provision about the purposes for which the land within the limits of land to be acquired or used, as shown on the Act plans, may be acquired.
- 27 Subsection (3) provides that Part 1 of the Compulsory Purchase Act 1965 applies to the acquisition of land under the Act as if the Act were a compulsory purchase order under the Acquisition of Land Act 1981, subject to the modifications contained in Schedule 6 referred to below. Part 1 of the 1965 Act provides for procedures for the compulsory acquisition of land.
- 28 Subsection (4) provides that the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 also apply as if this Act were a compulsory purchase order, subject again to the modifications contained in Schedule 6. The 1981 Act, in its application by the Act, provides an alternative streamlined method by which the Secretary of State may compulsorily acquire the

land required for construction of the railway.

- 29 Subsection (5) introduces Schedule 6 which makes modifications of the Compulsory Purchase Act 1965, the Compulsory Purchase (Vesting Declarations) Act 1981 and other legislation relating to compulsory acquisition in their application to the acquisition of land under the Act.

Section 5: Acquisition of rights in land

- 30 Section 5(1), (2) and (3) give the Secretary of State power to acquire rights over land (instead of acquiring the whole of a person's interest in land). This includes power to acquire or create easements and other rights and, in the case of land specified in Schedule 7, to impose restrictive covenants.
- 31 Subsection (4) provides that, in the case of land specified in Schedule 8, only rights in land may be compulsorily acquired for the purposes mentioned in the table.
- 32 Subsection (5) enables the Secretary of State by order to provide that a person specified in the order may exercise the powers under the Act to acquire rights or impose restrictive covenants. Some of the land within the Act limits, particularly that outside the limits of deviation but within the land to be acquired or used, is intended to be used for the diversion of statutory undertakers' apparatus. An order made under subsection (5) could enable a statutory undertaker to create the rights in land necessary to effect the diversion of the apparatus rather than those rights being acquired by the Secretary of State for the benefit of the undertaker.
- 33 Subsection (7) introduces Schedule 9, which makes provision to apply compulsory purchase legislation to the creation of rights, or imposition of restrictive covenants.

Section 6: Acquisition of part of land

- 34 Section 6, with Schedule 10 which it introduces, provides an alternative procedure to that set out in section 8(1) of the Compulsory Purchase Act 1965 relating to the acquisition of part of certain land. Where a notice to treat is served under Part 1 of the Compulsory Purchase Act 1965 in respect of land which forms only part of land consisting of a house with a park or garden or a factory, together with a copy of this section and Schedule 10, the procedure in Schedule 10 takes effect.
- 35 Subsection (2) makes it clear that the alternative procedure does not apply where only rights are being acquired, or restrictive covenants imposed.

Section 7: Acquisition of airspace

- 36 Certain works for the railway may require the taking of only the airspace above land shown on the deposited plans rather than the totality of the land. Subsection (1) enables the Secretary of State to acquire compulsorily only the airspace over land, without acquiring the land itself.
- 37 Subsection (2) disapplies the provisions of the Compulsory Purchase Act 1965 and the Compulsory Purchase (Vesting Declarations) Act 1981 which enable a landowner, in certain cases where it is proposed to purchase only part of property, to require the whole of the property to be acquired on the ground that taking that part of the land would result in material detriment to the remainder of the land. The result is that where only airspace over land is acquired, the Secretary of State cannot be required to acquire a greater interest in the property.

Section 8: Acquisition of subsoil or under-surface

- 38 Some of the land shown on the deposited plans is required for underground working tunnels and ancillary works where only the subsoil of the land needs to be acquired. Section 8 enables the Secretary of State to acquire compulsorily the subsoil only, rather than having to acquire the whole of the land.

- 39 Subsection (2) disapples the provisions of the Compulsory Purchase Act 1965 and the Compulsory Purchase (Vesting Declarations) Act 1981 which enable a landowner, in certain cases where it is proposed to purchase only part of property, to require the whole of the property to be acquired on the ground that taking that part of the land would result in material detriment to the remainder of the land. The result is that, where only the subsoil of land is acquired, the Secretary of State cannot be required to acquire a greater interest in the property.
- 40 However, subsection (3) excepts from that disapplication cases where a cellar, vault, arch or other construction forming part of a building is to be acquired compulsorily. In such a case the landowner's right to claim that the whole of the property should be acquired on the ground of material detriment is not affected.
- 41 Subsection (4) introduces Schedule 11 which in certain cases restricts the Secretary of State's power to acquire land to the purchase of subsoil or under-surface of land, or to both the subsoil or under-surface and rights of passage.

Section 9: Highway subsoil

- 42 Subsection (1) provides that the nominated undertaker may take and use any subsoil beneath a highway within the Act limits without being required to acquire the subsoil or any interest in it. However, under subsection (2) this does not apply to cellars, vaults, arches or other structures which form part of a building fronting on to the highway.
- 43 Subsections (3) and (4) provide that the powers to take subsoil or compulsorily acquire an interest in land cannot be exercised in the case of the highway land specified in the table in Schedule 12, except as regards a cellar or other underground structure which forms part of a building which fronts onto the highway, is within the Act limits, and in respect of which the power of compulsory acquisition under section 4(1) is exercisable.
- 44 Subsection (5) provides that, in the case of highways comprised in the land specified in the table in paragraph 1 of Schedule 11 (where only subsoil lying more than 9 metres beneath the surface level of the land can be acquired compulsorily), only subsoil which is more than 9 metres beneath the level of the surface may be taken under subsection (1).
- 45 Subsection (6) makes it clear that the restrictions in the section as regards the highway land specified in the table in Schedule 12 or in paragraph 1 of Schedule 11 do not prevent the nominated undertaker carrying out street works on those highways in exercise of the powers under the Act.
- 46 Subsections (7) to (9) provide that compensation is payable for any loss suffered as a result of the taking and use of subsoil under this section, with any disputes about such compensation to be determined under the Land Compensation Act 1961. But this does not apply to cases relating to statutory undertakers which are covered by the costs sharing regime in section 85 of the New Roads and Street Works Act 1991.

Section 10: Termination of power to acquire land

- 47 Subsection (1) provides that the compulsory purchase power conferred by section 4(1) is to expire 5 years from the date of Royal Assent ie on 23 February 2022.
- 48 Subsection (2), however, gives the Secretary of State the power by order to extend the period of 5 years. The period may only be extended once in relation to any particular land, and for a maximum of an additional 5 years.
- 49 Under subsection (3) any order extending the time limit for the exercise of the compulsory acquisition powers is subject to special parliamentary procedure under the Statutory Orders (Special Procedure) Act 1945.

- 50 Subsection (4) introduces Schedule 13, which gives rights to landowners to require acquisition of their land where an order is made extending the time limit in relation to the land.

Section 11: Amendments consequential on the Housing and Planning Act 2016

- 51 Section 11 introduces Schedule 14, which sets out amendments to this Act that are consequential on the Housing and Planning Act 2016 in relation to compulsory purchase.

Extinction and exclusion of rights over land

Section 12: Extinction of rights over land

- 52 Section 12 introduces Schedule 15, which relates to the extinction of private and other rights over land.

Section 13: Extinction of rights of statutory undertakers

- 53 Subsection (1) concerns the rights of statutory undertakers over land acquired by the Secretary of State which is required for the purposes of the works authorised by the Act. The nominated undertaker may extinguish these rights as if the land had been acquired under Part 9 of the Town and Country Planning Act 1990. Sections 271 to 273 of the 1990 Act provide a process by which any apparatus of a statutory undertaker on such land may be removed and related rights over the land extinguished.
- 54 Subsections (2) to (4) make modifications to sections 271 to 273 (and related provisions) of the 1990 Act. The modifications are needed because the compulsory purchase power under section 4(1) is vested in the Secretary of State and not the nominated undertaker, so the nominated undertaker will not be the acquiring authority for the purposes of those provisions.

Section 14: Exclusion of new rights of way

- 55 Section 14 prevents rights of way from being acquired by prescription or user over land which forms an access or approach to any railway infrastructure (as defined in subsection (3)) and which is acquired or held for Phase One purposes. Prescription is the legal process of a right of way becoming established through use over a period of at least 20 years.

Temporary possession and use of land

Section 15: Temporary possession and use of land

- 56 Section 15 introduces Schedule 16, which makes provision for temporary possession and use of land in connection with the works authorised by this Act.

Section 16: Use of roads

- 57 Subsection (1) confers on the nominated undertaker a power to use any roads on the land specified in the table in Schedule 8 or paragraph 2 of Schedule 11 for Phase One purposes. Under subsection (2) this power ends 5 years after Phase One of High Speed 2 is brought into general use. Under subsections (3) and (4) compensation is payable to the person responsible for managing the road for any loss suffered as a result of the use of this power, with any disputes about such compensation to be determined under the Lands Compensation Act 1961.

Section 17: Cranes

- 58 Section 17 makes provision for cranes employed by the nominated undertaker in connection with the construction of the authorised works to enter the airspace of the land specified in the table in subsection (7).
- 59 Subsections (2) and (3) provide that 7 days' notice must be given before the right to oversail a crane is exercised and that the right ends 7 days after the completion of the activities for which

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the crane has been used. Subsections (4) to (6) make provision for the payment of compensation to the owners and occupiers of the land for any loss suffered by them as a result of the exercise of the power.

Section 18: Enforcement of restrictions on land use

- 60 Section 18 enables covenants between the Secretary of State and persons with an interest in land entered into by agreement to bind successors in title to such interests even though they are not direct parties to the original covenant.
- 61 In order for covenants concerning land to be enforceable against successors in title to such land, the person claiming the benefit must usually have a neighbouring interest in land. The Secretary of State will usually not have such an interest until compulsory purchase powers are exercised. Therefore, to enable covenants which bind successors in title to be entered into before that time, this section removes the requirement to have a neighbouring interest in land.

Section 19: Compensation for injurious affection

- 62 Section 19 modifies section 10(1) of the Compulsory Purchase Act 1965 which provides for compensation for 'injurious affection' by the acquiring authority. Injurious affection has a specific and detailed meaning developed by case law. In very broad terms, injurious affection under section 10 of the 1965 Act relates to circumstances where the construction of public works such as High Speed 2 causes a diminution in the value of land. The compulsory purchase powers under the Act are given to the Secretary of State and not the nominated undertaker. The modification of section 10 of the 1965 Act is needed to make the nominated undertaker, who is not the acquiring authority, responsible for the payment of compensation for injurious affection.

Planning

Section 20: Deemed planning permission

- 63 Subsections (1), (3) and (4) deem planning permission under Part 3 of the Town and Country Planning Act 1990 to be granted for development authorised by the Act, subject to the other provisions of the Act and the conditions set out in Schedule 17. The conditions are enforceable by the relevant planning authority.
- 64 Subsection (2) provides that this permission does not apply to ancillary development not comprising a scheduled work, if that development would be likely to have significant effects on the environment, unless it is exempt development or has been appropriately environmentally assessed in the environmental statement for the Act.
- 65 Subsection (4) classifies this planning permission as "specific planning permission" for the purposes of treating the land used by Phase One as operational land of a statutory undertaker. Subsection (5) ensures that, where works are carried out by the nominated undertaker, the conditions in Schedule 17 take precedence over any permitted development rights under the normal planning regime.

Section 21: Time limit on deemed planning permission

- 66 Subsection (1) provides that, for scheduled works, the deemed planning permission granted by section 20 applies only to works begun no later than ten years after Royal Assent to this Act.
- 67 Subsections (2) and (3) allow the Secretary of State to extend this time limit by statutory instrument, which will be subject to the negative resolution procedure. Subsection (4) disapplies section 91 of the Town and Country Act 1990, which sets out the time limit for "normal" planning permissions.

Section 22: Power to disapply deemed planning permission

- 68 Subsections (1), (3) and (4) allow the Secretary of State, by means of a statutory instrument that is subject to the negative resolution procedure, to disapply the deemed planning permission granted by section 20(1) in respect of development consisting of operations for the maintenance or alteration of the Phase One works, from the date specified in the statutory instrument.
- 69 Subsection (2) provides that, in the event of such a disapplication, any further development would be subject to the normal provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 applying to development authorised by a local Act.
- 70 Subsections (5) and (6) allow the Secretary of State to impose operational planning conditions on the scheduled works listed. Subsections (7), (8), (9) and (10) ensure that such an imposition is consistent with other provisions of the Act.

Section 23: Parking at Birmingham Interchange: limit on deemed planning permission

- 71 Subsection (1) limits the amount of car and coach parking (other than short term parking) that may be provided at Birmingham Interchange station under the planning permission given by section 20. (This limit is a maximum of 7,500 car parking places and 5 coach parking places).
- 72 Subsections (2) and (3) provide that, instead of Schedule 17 applying to the parking, the permission is to be treated as an outline planning permission for which access, appearance, landscaping and layout are reserved for the subsequent approval of the local planning authority.

Section 24: Development consent

- 73 Section 24 removes the requirement for development consent under the Planning Act 2008 for the works authorised by this Act. The construction of a railway is, with exceptions, one of the categories of nationally significant infrastructure project which requires consent from the Secretary of State under that Act. However, a requirement for development consent under the 2008 Act would be inappropriate for works which already have the specific authorisation of Parliament.

Deregulation

Section 25: Listed buildings

- 74 Section 25 introduces Schedule 18, which disapplies and modifies various controls relating to listed buildings.

Section 26: Ancient monuments

- 75 Section 26 introduces Schedule 19, which disapplies and modifies controls regarding ancient monuments.

Section 27: Burial grounds

- 76 Subsection (1) disapplies existing ecclesiastical and other law concerning burial grounds in the case of the construction works authorised by this Act.
- 77 Subsection (2) provides that where the use of land for those works involves disturbing human remains, the disapplication of the law relating to burial grounds only applies if the remains and any monument to the deceased have been dealt with in accordance with Schedule 20 which regulates the way in which such remains and monuments are to be dealt with.
- 78 Subsection (3) provides a definition of "monument" for the purposes of section 27 and

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Schedule 20 to include a tombstone or other memorial to the deceased. This includes a monument to one or more deceased persons.

Section 28: Consecrated land

- 79 Section 28 provides that no law, either ecclesiastical or otherwise, applying to consecrated ground is to restrict the exercise of powers conferred by the Act. This provision does not apply to burial grounds, because burial grounds are covered by section 27 and Schedule 20.

Section 29: Commons and other open spaces

- 80 Section 29 disapplies enactments which regulate the use of commons, town or village greens, open spaces or allotments. It provides that no such enactment prevents or restricts the doing of anything for Phase One purposes on land held by the Secretary of State or the nominated undertaker for those purposes, the exercise of any right of entry under the Act or the doing of anything in exercise of any other power of the Act. This therefore allows the carrying out of works for Phase One purposes which would otherwise be in breach of such enactments.

Section 30: Trees

- 81 Section 30 disapplies tree preservation orders made under section 198(1) or 202(1) of the Town and Country Planning Act 1990 and regulations made under section 202A of that Act, and the provisions of section 211 of that Act dealing with trees in conservation areas, in relation to certain tree works. These are works to trees within the Act limits that are carried out for the purposes of the works authorised by the Act and also works to trees growing on any other land used for Phase One purposes which are necessary for the maintenance or operation of Phase One of HS2 or for safety reasons.

Section 31: Overhead lines

- 82 Section 31 relates to the installation and diversion of overhead lines. As a number of overhead lines will require to be diverted for Phase One of High Speed 2, subsection (1) removes the need for the Secretary of State's consent under the Electricity Act 1989 where the overhead line work concerned is within the Act limits, is a work authorised by the Act and has deemed planning permission under the Act. By virtue of subsection (3), subsection (1) is treated as applying where the work concerned is done by the electricity undertaker if it would be work authorised by the Act and would have deemed planning permission when carried out by the nominated undertaker.
- 83 Where overhead line work is needed for Phase One purposes to which subsection (1) does not apply, and a consent under section 37 of the Electricity Act 1989 is therefore required, subsection (2) provides that there is no automatic duty upon the Secretary of State to hold a public inquiry in every case where the planning authority has objected: instead the decision whether to hold a public inquiry is to be a matter for the Secretary of State after considering whether the number and substance of any objections require one.
- 84 By virtue of subsection (4), development consent under the Planning Act 2008 is not required for electric line work done in consequence of any work authorised by the Act, even if done by the electricity undertaker.

Section 32: Water

85 Section 32 introduces Schedule 21 which provides for the disapplication of certain legislation relating to water.

Section 33: Buildings

86 Subsection (1) introduces Schedule 22 which provides for the disapplication or modification of various provisions of the Building Act 1984 and building regulations.

87 Subsection (2) introduces Schedule 23 which provides for the disapplication or modification of the Party Wall etc Act 1996.

Section 34: Street works

88 Section 34 introduces Schedule 24 which disapplies various controls relating to works in or near streets and highways.

Section 35: Traffic

89 Section 35 introduces Schedule 25 which contains provisions relating to traffic regulation.

Section 36: Lorries

90 Section 36 introduces Schedule 26, which contains provisions relating to the use of heavy commercial vehicles.

Section 37: Noise

91 Section 37 introduces Schedule 27, which contains provisions regarding noise arising from the construction of authorised works.

Section 38: Local Acts

92 Section 38 introduces Schedule 28, which contains provisions to disapply various controls imposed by local Acts relating to London, Oxfordshire, Staffordshire and the West Midlands.

Railway matters

Section 39: Objectives of Office of Rail and Road

93 The Railways Act 1993 imposes on the Office of Rail and Road (ORR) a duty to address certain objectives in the execution of its non-safety functions. These objectives do not currently contain any explicit requirement for the ORR to facilitate the construction of Phase One of High Speed 2. Subsection (1) adds such a requirement and thereby clarifies the ORR's role for the benefit of the ORR and rail operators. Subsection (2) instructs the ORR to consult the Secretary of State about how it should carry out this duty. The duty will sit alongside the ORR's existing duties and is not intended to override its existing duties.

94 Subsection (3) enables the Secretary of State to make an order repealing this section. This power enables the objective to be removed from the remit of the ORR when it is no longer relevant.

Section 40: Disapplication of licensing requirement in pre-operational phase

95 Subsection (1) provides that section 6(1) of the Railways Act 1993 does not apply to a network constructed under this Act, or any trains running on such a network, if it is not ready for commercial use. But for this disapplication, section 6(1) of the 1993 Act would impose a requirement for a licence or an exemption on the operator of the railway asset. Under subsection (2), a network will be deemed ready for commercial use if the Secretary of State lays a notice before Parliament to that effect.

- 96 Subsection (3) provides that such an exemption under this section is an appropriate licence exemption for the purposes of section 122 of the Railways Act 1993. This means that a defence is available in the case of any proceedings for nuisance.

Section 41: Disapplication of statutory closure provisions

- 97 Subsection (1) provides that the Secretary of State may disapply the closure provisions of the Railways Act 2005 in the case of closures which are necessary or expedient because of the construction or operation of Phase One of High Speed 2. The disappplied closure provisions set out what must be done, in terms of notice, consultation and provision of information, in the event of a proposal to close existing services, stations or parts of the rail network. The Secretary of State may not exercise the power under this section after the Secretary of State has notified Parliament that Phase One is ready for commercial use.

Section 42: Other railway legislation etc.

- 98 Section 42 introduces Schedule 29, which provides for the ways in which other railway legislation applies to Phase One of High Speed 2.

Section 43: Co-operation

- 99 The nominated undertaker which builds and operates Phase One of High Speed 2 will, in the course of its work, have impacts on other controllers of assets on the UK rail network, and vice versa. Subsections (1) and (2) require both parties, if they consider that a matter may affect an asset of another, to give notice and agree arrangements for working out how to deal with the matter.
- 100 Subsection (3) provides that the terms of an agreement must be accepted by both parties but, if not, arbitration should be used to reach agreement. Subsection (4) introduces Schedule 30, which contains further details on the provisions for such arbitration.
- 101 Subsection (5) defines what is a Phase One asset or facility for these purposes.
- 102 Subsection (6) provides that subsections (1) and (2) do not apply in relation to matters or agreements which are within the remit of the Office of Rail and Road.

Section 44: Transfer of functions relating to works

- 103 Subsections (1), (2) and (3) provide that the Secretary of State may by order transfer the authority to carry out works on railway land where the land is also being transferred. This section is included in the Act because, during the construction of Phase One of High Speed 2, works may be required on or close to other railways where unrelated work, approved under other legislation, is also due to be carried out and will still be necessary.

Nominated undertaker and other Phase One function-holders

Section 45: Nominated undertaker

- 104 Subsection (1) gives the Secretary of State the power to nominate, by means of an order, a 'nominated undertaker' to carry out some or all of the works, scheduled and ancillary, authorised by the Act.
- 105 Subsection (2) provides that, in the absence of a designated nominated undertaker for any provision of this Act, the Secretary of State is deemed to be the nominated undertaker for that provision. This is to allow for situations that may arise where no nominated undertaker has been appointed or there is a delay between a nomination ceasing to have effect (for example, because an agreement has been terminated) and the Secretary of State making a nomination in favour of another person.

106 Subsection (3) allows the Secretary of State to restrict the discretionary exercise of the power granted by subsection (1). This is to provide for the Secretary of State to be able to make contractual agreements prior to the nomination of a person or body as the nominated undertaker.

107 Subsection (4) allows the Secretary of State, through an order, to modify any provisions of the Act that refer to the Secretary of State, for cases where modifications are needed in consequence of the Secretary of State's having the functions of the nominated undertaker.

Section 46: Transfer schemes

108 Section 46 contains provisions for the Secretary of State to transfer any property, rights or liabilities from High Speed Two (HS2) Ltd, or any of its subsidiaries, to any person. Further details about such transfer schemes are contained in Schedule 31, which can be found below.

Statutory undertakers

Section 47: Extension of planning permission for statutory undertakers

109 Section 47 introduces Schedule 32. This Schedule extends the planning permission available for certain works of statutory undertakers, carried out in consequence of Phase One, which have been environmentally assessed in connection with the Act.

Section 48: Protective provisions

110 Section 48 introduces Schedule 33, which contains provisions protecting the interests of certain bodies who may be affected by other provisions of the Act.

Reinstatement and environmental works

Section 49: Compulsory acquisition of land for regeneration or relocation

111 Subsections (1) and (2) enable the Secretary of State to acquire land compulsorily to relocate the whole or part of an undertaking (defined by subsection (8) to include a business or facility) where, as a result of the exercise of any of the powers of the Act, the former site of the undertaking or part of it is no longer reasonably capable of being used for the undertaking.

112 Under subsection (3) the powers of compulsory purchase under this section are exercisable by means of a compulsory purchase order to which the usual procedure under the Acquisition of Land Act 1981 is to apply.

113 Subsection (4) provides that specified provisions of the Town and Country Planning Act 1990, which apply in relation to compulsory acquisition or appropriation under Part 9 of that Act, will apply to a compulsory acquisition under this section subject to modifications to make them apt for such an acquisition.

114 Subsection (5) applies certain of those provisions to acquisitions by the Secretary of State by agreement, which are made for a purpose falling within subsection (4)(b) and (c).

115 Subsections (6) and (7) provide that the power of compulsory acquisition under the section includes power to acquire or create easements or other rights over land. The same modifications of compulsory purchase legislation apply to the acquisition or creation of such rights as where rights are acquired or created by local authorities compulsorily under Part 9 of the 1990 Act.

Section 50: Power to carry out reinstatement works

116 Section 50 allows the nominated undertaker to carry out works to reinstate within the Act limits all or part of an undertaking whose operation or use has been discontinued or

substantially impaired by the exercise of the powers of the Act.

- 117 Subsection (3) allows this power to be used to provide temporary reinstatement works, followed by permanent reinstatement works.
- 118 Where the nominated undertaker carries out such reinstatement works, planning permission is granted under section 20 and is accordingly subject to the conditions specified in Schedule 17. However, under subsection (4) the Secretary of State may direct that this permission does not apply in relation to particular reinstatement works, and where this is done, under subsection (5) the Secretary of State may further direct that planning permission is deemed to be granted under Part 3 of the Town and Country Planning Act 1990 for the works subject to conditions tailored for the development concerned. Where a direction has been given to that effect, the Secretary of State may also direct that a person other than the nominated undertaker may carry out the works.
- 119 By virtue of subsection (6), where such a planning direction is given, the deemed planning permission is treated for the purposes of most provisions of the Town and Country Planning Act 1990 as granted on an application referred to the Secretary of State under section 77 of that Act, and under subsection (7) the time limit in section 21 is applied to it as if the reinstatement works were scheduled works.
- 120 By virtue of subsection (8), a planning direction under subsection (5) may not be made by the Secretary of State where the reinstatement works may have significant effects on the environment, unless they have been appropriately environmentally assessed in the environmental statement for the Act.
- 121 Subsection (9) requires planning directions under subsection (5) to be published and copies distributed to the local planning authority and the owners and occupiers of the land concerned. Subsections (10), (11), (12) and (13) make provision for where the local planning authority is a Mayoral development corporation, or if a Mayoral development corporation becomes, or ceases to be, the local planning authority to which copies of planning directions under subsection (5) are distributed.
- 122 Subsection (14) provides that where someone other than the nominated undertaker carries out the reinstatement works, that person is responsible for any compensation for injurious affection which may become payable, in place of the nominated undertaker.
- 123 Subsection (15) enables directions under subsection (5) to be revoked and varied.

Section 51: Enforcement of environmental covenants

- 124 Section 51(1) applies when the Secretary of State and a landowner agree that the landowner is to be subject to obligations regarding works relating to land which have, broadly speaking, the aim of mitigating adverse environmental effects caused by any of the works for Phase One of High Speed 2.
- 125 Subsection (3) provides that the Secretary of State or an authorised person may enforce the agreement against the landowner or against any successor in title of the landowner.
- 126 Subsection (6) stipulates certain details that must be part of any agreement made under subsection (1).
- 127 Subsection (8) provides that an environmental covenant is a local land charge.
- 128 Subsections (9), (10) and (11) provide that exemplary damages may be awarded by the court in the event of a breach of an agreement under subsection (1).

Further high speed rail works

Section 52: Works in Scotland for Phase One purposes

- 129 Section 52 gives the Scottish Ministers an order-making power, enabling them to approve works required in Scotland for Phase One purposes. This is to allow for works which may be necessary to accommodate high speed train services travelling at normal speed from the West Midlands to Scotland. Given the early design stage of the project, such works have not yet been identified, but they might potentially include lengthening a station platform to accommodate longer trains or extending depots.
- 130 Subsection (2) makes provision for the procedures to be followed when making orders under section 52, with particular reference to the Transport and Works (Scotland) Act 2007 and secondary legislation made under that Act.
- 131 Subsection (3) enables references to these provisions to be read as including any amendments made to them.
- 132 Subsections (4) and (5) enable Scottish Ministers to modify legislation relating to the carrying out of works in Scotland for Phase One purposes without the legislative restrictions that would otherwise apply to the Scottish Ministers bringing forward legislation in the Scottish Parliament.

Section 53: Power to apply Act to further high speed rail works

- 133 Section 53 makes provision to facilitate authorisation of further adjustments or minor extensions of Phase One by means of an order under the Transport and Works Act 1992 (“TWA Order”).
- 134 Subsections (1) to (3) provide that a TWA order which relates to “a relevant Phase One matter” may apply any provision of the Act, with or without modifications, to anything authorised by the order. A relevant Phase One matter is defined by subsection (2) and includes works to be carried out for Phase One purposes. This could, for example, include provision for an additional work site or an additional facility outside the Act limits. So if any adjustment to the Phase One works were found to be needed, the TWA order authorising an additional or modified work could provide for the same planning regime under the Act to apply to it (so that the additional or modified work is treated in the same way as the works authorised under the Act).
- 135 Subsection (4) disapplies section 13(2) of the Transport and Works Act 1992, which gives the Secretary of State a discretion not to make a TWA order if the objects of the order sought could be achieved by other means. This provides certainty that in appropriate cases powers can be sought for the diversion of utilities by a TWA order notwithstanding that other statutory means may be available under which the powers could be sought.
- 136 Subsection (5) provides that a TWA order cannot apply the provisions in the Act which enable the Secretary of State to extend the time limit for the exercise of compulsory purchase powers or which modify legislation relating to listed buildings or ancient monuments.

Section 54: Rights of entry in connection with high speed rail works and Section 55: Exercise of rights of entry

- 137 Section 54 allows an authorised person to enter land, in connection with a Bill or proposed Bill authorising a high speed rail line, for the purpose of conducting surveys or facilitating compliance with EU environmental protection legislation.
- 138 Land may only be entered if it is within 500 metres of the centre of a proposed line of route.

Subsection (10) allows the Secretary of State to alter this distance through an order either for all cases, or for a specific class of case. Subsection (11) stipulates that an order amending the distance for all cases is subject to the affirmative resolution Parliamentary procedure. Subsection (13) stipulates that an order amending the distance for a specific class of case is subject to negative resolution Parliamentary procedure.

- 139 Subsection (2) of section 54 stipulates that for entry onto residential land, the person must be authorised by a warrant issued by a justice of the peace (for residential land in England and Wales) or a justice of the peace or sheriff (for residential land in Scotland). For any other land the person must be authorised in writing by the Secretary of State.
- 140 Entry should only be authorised by the justice of the peace (in the case of residential land) or by the Secretary of State (for any other land) if it appears that: there is a genuine need to enter the land; all reasonable attempts have been made to obtain consent and; and either there is likely to be a Bill in Parliament to authorise a high speed rail line, i.e. a Command Paper to that effect has been published by the Government, or there already is such a Bill in Parliament.
- 141 Under section 55, the authorisation is valid for 6 weeks after it has been authorised by the justice of the peace or the Secretary of State. Further, any authorised persons must, if requested, produce evidence of their authorisation and the purpose of entry; give notice of at least 14 days to the occupier; and, comply with any other conditions subject to which the authorisation was granted.
- 142 Subsection (4) makes it an offence wilfully to obstruct any authorised person exercising this right of entry.

Grants

Section 56: Grants for affected communities and businesses etc

- 143 Section 56 allows the Secretary of State to pay grants to contribute to the funding of activities or projects for the benefit of communities, businesses and the environment in areas that are, or are likely to be, affected by the works authorised by this Act or works in connection with a Bill or proposed Bill for a high speed railway connecting to Phase One of High Speed 2.
- 144 Subsections (4) and (5) give the Secretary of State the power to determine the amounts payable and conditions that may be attached to the grant. Subsection (6) allows the Secretary of State to delegate the functions set out in subsections (4) and (5) to another person.

The Crown

Section 57: Application of powers to Crown land

- 145 Section 57 relates to Crown land. With the consent of the relevant Crown authority, subsections (1) and (2) permit the authorised works to be carried out by the nominated undertaker, and the exercise of a right of entry under section 54, in relation to Crown land. Subsection (3) provides, amongst other matters, that this consent can be given subject to conditions.
- 146 Subsection (4) defines 'Crown land'.
- 147 Subsection (5) indicates who is the 'Crown authority' for the purposes of granting consent to the nominated undertaker. This will, in practice, be a Government department, the Crown Estate Commissioners, the Scottish Ministers or the Chancellor of the Duchy of Lancaster, dependent on the land in question.
- 148 Subsection (6) provides that, if there is a question about which body is the 'Crown authority', the matter is to be decided by the Treasury.

Section 58: Highways for which the Secretary of State is highway authority

149 Section 58 concerns highways for which the Secretary of State is the highway authority, namely trunk roads and most motorways. This section provides that the powers of the Act with respect to works may be exercised in relation to such highways with the Secretary of State's consent.

Section 59: Crown Estate

150 Certain restrictions apply to the disposal of Crown land held by the Crown Estate Commissioners. As with Crossrail, such restrictions might be inconvenient. As a result, section 59 contains provisions analogous to those in the Crossrail Act 2008 removing the restrictions on disposal of land held by the Commissioners which they consider may be required for Phase One purposes.

Section 60: Royal parks

151 Section 60 enables the Secretary of State (as the person responsible for the Royal Parks Agency) to grant a lease of land in the Royal Parks, or an easement over such land, where needed for Phase One purposes. The grant of a lease or easement under the section may be for such consideration and on such terms as the Secretary of State considers appropriate.

Deposited plans and sections

Section 61: "Deposited plans" and "deposited sections"

152 Section 61 defines the meaning of "deposited plans" and "deposited sections" for the purposes of the Bill.

Section 62: Correction of deposited plans

153 Section 62 contains provisions for correcting the plans or book of reference to the plans which have been deposited in Parliament with this Act, should this be required. These provisions are normal for hybrid or local Acts.

154 Under subsection (1), corrections may be made if the plans are incorrect in describing the land to be taken, or its ownership or occupation. In these cases, the Secretary of State can apply to have these corrected by two justices who have jurisdiction over the land. This can be done after giving 10 days' notice to the owners or occupiers of the land.

155 Subsections (2) to (4) provide for the justices to certify that such an error in the plans was made by a mistake or inadvertence, and, in such a certificate, state in what respect the plans or book of reference are incorrect. The certificate must then be deposited in Parliament and with each local authority in whose area any of the land concerned is situated. Once this has occurred, the plans or book of reference are to be treated as corrected, and the Secretary of State may act as though the deposited plans had always been as corrected.

156 Subsection (6) provides that, if the land in question is situated in two judicial areas, a justice of the peace with jurisdiction in one of the areas may act with regard to land in either area.

Miscellaneous and general

Section 63: Environmental Impact Assessment Regulations

157 Section 63 provides that where a building not forming part of the Phase One works authorised by the Act (say, a building over a station) is built to replace a building demolished or substantially demolished under the Act, the planning application for that replacement building must be accompanied by an environmental assessment where the conditions in subsection (1) are met, except where subsection (2) applies in which case the final condition of subsection (1) does not need to be met for an environmental assessment to be needed. This provision is

intended to ensure that all the direct and indirect environmental effects of development authorised by the Act are properly assessed at the appropriate stage.

Section 64: Arbitration

- 158 Section 64 provides how disputes which are to be determined under the Act by arbitration are to be dealt with. Subsection (1) provides that such arbitration shall be settled by a single arbitrator to be agreed between the parties or, where the parties cannot agree, by a person appointed by the President of the Institute of Civil Engineers (the ICE).
- 159 However, it is accepted that in some cases, notably where the dispute involves railway industry matters, it may not be appropriate for an arbitrator to be appointed by the President of the ICE. If the President should decline to make an appointment, then subsection (3) makes provision that such an arbitrator may be appointed by the Office of Rail and Road (ORR).
- 160 Subsection (4) provides that a member or employee of the ORR may be appointed as an arbitrator in the circumstances set out in subsection (3).
- 161 Subsection (5) enables the Secretaries of State for Transport and Communities and Local Government, acting jointly, to make procedural rules governing arbitration. Such rules will be made by statutory instrument which can be annulled by a resolution of either House of Parliament.

Section 65: Notices and other documents

- 162 Section 65 relates to the service of notices or other documents on any person where that is required or authorised under the Act.
- 163 Subsection (1)(a) allows a document to be served by email or other electronic means where the recipient has agreed to the electronic method of service. Under subsection (3) a person who receives a document by electronic means may request a hard copy within 7 days and the other party must then provide the hard copy as soon as reasonably practicable.
- 164 However under subsection (4) a notice under section 55(3) seeking a right of entry under section 54 for the purposes of future high speed rail works cannot be given by electronic means. This is because failure to comply with such a notice may constitute evidence of an offence under section 55(4).
- 165 Subsections (1)(b) to (d) and (2) provide for serving documents by delivery or by post. They include provision specifying where a document may be served on individuals, bodies corporate and partnerships.
- 166 Subsections (5) and (6) contain provisions to deal with cases where a document is required to be served under the Act on a person as the owner or occupier of land and the person's name or address cannot be determined, and provides the means by which documents can still be served.

Section 66: Vocational qualifications

- 167 Section 66 requires the Secretary of State to prepare an annual report of the vocational qualifications gained by individuals employed in connection with, and in preparation for, the construction of the high speed rail network. The report is required to cover a breakdown of the type of qualification and activity and an assessment of the costs of gaining these vocational qualifications. The report must be laid by the Secretary of State before Parliament as soon as reasonably practicable after the end of the financial year to which it relates.

Interpretation

Section 67: “Phase One purposes”

168 Section 67 defines the phrase “Phase One purposes” as used in this Act, as the purposes of or in connection: with works authorised by the Act; with trains all or part of whose journey takes place on Phase One of High Speed 2; or otherwise in connection with Phase One of High Speed 2 or any high speed railway of which Phase One forms or is to form part.

Section 68: Interpretation

169 Section 68 contains a number of definitions of terms and the ways in which they should be applied in relation to this Act. For any which refer to another Act, please see the definition in the relevant piece of legislation.

Final

Section 69: Financial provision

170 Section 69 contains provisions about the funding of expenditure incurred by the Secretary of State under the Act, and provides that such expenditure will be funded out of money provided by Parliament. The section also provides that where the Act results in an increase in the sums payable under other legislation out of money provided by Parliament, those sums will also be funded by Parliament.

Section 70: commencement and short title

171 Section 70 provides that the Act came into force on Royal Assent save for section 11 and Schedule 14 which came into on the appointment date set out in regulations to be made by statutory instrument. Section 70(4) provides how the Act may be cited.

Schedule 1: Scheduled works

Construction requirements

172 Schedule 1 sets out the Phase One scheduled works, which are the main works authorised by the Act. Each of these works has a centre line (or in the case of a road widening, a limit of widening) shown for it on the deposited plans, with a limit of lateral deviation, and a level shown for it on the deposited sections. By virtue of paragraph 1(1), the scheduled works must be constructed in the lines or situations, and at the levels, shown on these. Some stations, depots and shafts also have an upper limit shown for them on the deposited sections, in which case the relevant works must be constructed within the limit.

173 Paragraph 1(2) allows deviation laterally from these lines or situations, but only within the limits of deviation shown on the plans. It also allows unlimited deviation downwards from the levels shown, and deviation upwards of not more than three metres. This power to deviate upwards is subject to any upper limit applying to stations, depots and shafts.

Description of scheduled works

174 The detail of the scheduled works are set out.

Schedule 2: Works

Part 1: Further and supplementary provisions

Authority to survey and investigate land etc

175 Schedule 2 contains a number of further and supplementary works powers for Phase One.

- 176 Paragraph 1(1) authorises the nominated undertaker to survey or investigate land which is within the Act limits or affected by the Phase One works, and to protect or remove flora or fauna. Paragraph 1(2) provides that this includes the power to make trial holes, carry out ecological or archaeological investigations, and to take samples.
- 177 Under paragraphs 1(3) and (4), consent of the highway authority is required to the making of trial holes in a carriageway or footway in exercise of these powers, with such consent not to be unreasonably withheld.
- 178 Paragraph 1(5) confers power to enter land in order to carry out the investigation, and to place or leave apparatus. Under paragraph 1(6), 7 days' notice must be given to the owners and occupiers of the land before doing so. Part 2 of the Schedule contains other provisions about entry, including about compensation.

Support of buildings

- 179 Paragraph 2(1) enables the nominated undertaker to support or strengthen buildings that may be affected by construction on giving 8 weeks' notice to the occupier. This is because there may be cases where construction can lead to ground movement which requires supporting or strengthening work to be carried out for nearby buildings. These powers apply to buildings within the relevant distance of the works (see paragraph 6(3)).
- 180 Paragraph 2(2) provides for recourse to arbitration if the occupier disputes the need for or expediency of the supporting work within 21 days, and paragraph 2(3) enables an arbitrator to prescribe how such works are to be undertaken if he or she thinks they should be done.
- 181 Paragraph 2(4) contains provisions for the nominated undertaker to enter adjacent land to carry out the supporting works if they cannot reasonably conveniently be carried out without doing so. The nominated undertaker must give the owners of the adjacent land 14 days' notice.
- 182 Paragraph 2(5) provides that the power under paragraph 2(1) or (4) may be exercised without notice in an emergency.
- 183 Paragraph 2(6) permits the nominated undertaker to enter and survey buildings and land to decide whether or how to carry out supporting work.
- 184 Under paragraph 2(7) the nominated undertaker may, in order to strengthen or support a building, leave equipment or material in, next to or under it, or on or under land in its vicinity.
- 185 Paragraph 3 provides that the nominated undertaker may carry out further supporting or strengthening works for a building previously supported under paragraph 2 on giving 8 weeks' notice. Paragraph 3(2) sets out the period within which this can be done, namely 5 years from when the Phase One work necessitating the previous supporting work was brought into general use.
- 186 Paragraph 3(3) to (8) mirror, for the further supporting works, paragraph 2(2) to (7).
- 187 Paragraph 4 allows the nominated undertaker to install and operate monitoring apparatus on any building to measure movement and the effectiveness of supporting work. Similar provisions about objections and arbitration, entry onto adjacent land and surveying apply as for paragraph 2 of the Schedule. Under paragraph 4(7) the nominated undertaker may also from time to time maintain, repair or alter the position of monitoring apparatus and take readings from it.
- 188 Paragraph 5 applies paragraphs 2 to 4 to the apparatus of a utility undertaker or relevant pipe-lines belonging to another body. This is subject to the modifications in paragraph 5(2).

Trees on neighbouring land

189 Paragraph 7 provides for cases where trees overhang or otherwise encroach on land used for the purposes of Phase One. The nominated undertaker may serve a notice (“a tree works notice”) on the occupier of the land requiring the occupier to remove or prune a tree or cut its roots for maintenance or safety reasons. The occupier may then serve a counter notice within 28 days in which case the tree works notice only has effect if confirmed by the county court. If a tree works notice is in effect for a continuous period of 28 days without being complied with, the nominated undertaker may enter the land and carry out the tree works.

190 Paragraph 7(8) provides that works required by a tree works notice may be carried out on a tree which is subject to a tree preservation order or which is in a conservation area.

Discharge of water

191 Paragraph 8 authorises the nominated undertaker to use watercourses and public sewers and drains for the purposes of construction drainage. Paragraph 8(1) provides that this may entail the laying, removal and alteration of pipes or making connections with the watercourses, sewers or drains within the Act limits.

192 Paragraph 8(2) provides that the nominated undertaker may not discharge water into any public sewers or drains without the agreement of the owner, whose consent cannot be unreasonably withheld. Paragraph 8(3) requires the nominated undertaker not to make openings into public drains or sewers without the owner’s approval of the plans and the owner being given an opportunity to supervise the works.

193 Paragraph 8(5) requires the nominated undertaker to take reasonable steps to secure that water being discharged is as free as is practicable from any solid substance, such as soil or gravel, or oil or matter in suspension. Paragraph 8(6) makes it clear that the powers conferred on the nominated undertaker do not obviate the need for an environmental permit where relevant.

Temporary interference with waterways

194 Paragraph 9 contains provisions to allow the nominated undertaker to interfere temporarily with the waterways identified in paragraph 9(1). Paragraph 9(2) provides that it may carry out temporary or dredging works in relation to these waterways, moor or anchor vessels and temporarily close them.

195 Paragraph 9(3) sets out that no more of a waterway is to be closed than is necessary in the circumstances and if complete closure is necessary then all reasonable steps are to be taken to cause the minimum obstruction to users.

196 Paragraph 9(4) and (5) provide that the nominated undertaker is not liable for any losses which occur as a result of interference with a public right of navigation, and provide for compensation for losses as a result of interference with a private right of navigation. Such compensation is determined in accordance with Part 1 of the Land Compensation Act 1961 if there is a dispute.

Electronic communications apparatus

197 Paragraph 10 allows the nominated undertaker, when installing telecommunications apparatus for Phase One, to provide additional capacity for others’ use. This does not apply to radio masts.

Level crossings

- 198 Paragraph 11 allows the nominated undertaker, when realigning the Aylesbury to Princes Risborough railway, to carry it on the level across the two footpaths listed in the paragraph.
- 199 Paragraph 11(3) provides that the nominated undertaker and highway authority may come to agreements about how the new level crossings should be constructed and maintained.

Part 2: Exercise of powers of entry etc

- 200 Part 2 contains ancillary provisions as respects the powers of entry in Part 1 of the Schedule and provides safeguards subject to which the powers are to be exercised.
- 201 Paragraph 12 applies to all the powers to enter land in Part 1, being the provisions set out in paragraph 12(1). The powers of entry are exercisable at any reasonable time and before entering the land the person exercising the right of entry must, if so required, produce evidence of authority to enter the land and state the purpose of entry. The person may take vehicles and equipment (including plant and machinery) on to the land and such other persons as may be necessary.
- 202 Paragraph 13 provides additional safeguards in the case of entry onto residential land (which is defined by paragraph 13(6) and includes a house and its garden, grounds and outbuildings) and any non-residential buildings. In such cases, where entry is refused, the nominated undertaker or other person authorised to exercise the power of entry on behalf of the nominated undertaker cannot insist on entry unless authorised to do so by a warrant issued by justice of the peace.
- 203 Under paragraph 13(2) a warrant must be issued if the justice of the peace is satisfied that the nominated undertaker is entitled to enter the residential land or building concerned and that admission has been refused or a refusal is reasonably apprehended.
- 204 Paragraph 13(4) provides that the issue of a warrant does not remove any requirement under Schedule 1 to serve notice before exercising the power in question. Where no period of notice is provided as regards the right of entry at least 24 hours' notice of the entry must be given (either before or after the issue of the warrant).
- 205 The requirement under paragraph 13 to obtain a warrant does not apply to entry under paragraph 7(6) to carry out tree works specified in a tree works notice. In such a case other safeguards apply in that a person served with the tree works notice is entitled to serve a counter notice and the tree works notice cannot then take effect unless confirmed by an order of the county court.
- 206 Paragraph 14(1) provides that compensation is payable to anyone who suffers loss as a result of the exercise of any power under paragraphs 1 to 4 of the Schedule, with disputes about such compensation to be determined under the Land Compensation Act 1961. Paragraph 14(2) provides that this does not affect any entitlement to compensation for injurious affection, other than for loss for which compensation is payable under paragraph 14(1).
- 207 Paragraph 14(4) makes provision for the county court to order the nominated undertaker to pay compensation to a person who incurs expenses in complying with a tree works notice under paragraph 7(2) or who suffers any loss or damage in consequence of the carrying out of works required by a tree works notice.

Schedule 3: Overhead line diversions

- 208 The table in this Schedule identifies the overhead line works authorised by section 2(5).

Schedule 4: Highways

209 Schedule 4 deals with highways as they relate to the works authorised by this Act.

Part 1: Highway access

210 Paragraph 1 contains provision for the nominated undertaker to create, or improve, means of access within the Act limits.

211 For accesses at places shown on the deposited plans, paragraph 1(2) provides that on any highway used by vehicular traffic, works to make a means of access may only be carried out after 28 days' notice to the highway authority. Paragraph 1(3) and (4) provide that the works are not to be done if the highway authority objects to the siting of the access within the 28 day period, because in its view the access ought to be moved elsewhere within the Act limits on road safety grounds or because of injury to local amenity.

212 If these works are to be carried out on a highway with vehicular traffic, paragraph 1(5) requires plans to be approved by the highway authority. Under paragraph 1(6), the only ground on which approval of the plans can be refused is that the plans should be modified to prevent or reduce either injury to local amenity or effects on road safety, and are reasonably capable of being so modified.

213 Paragraph 1(7) and (8) concern works for accesses undertaken within the Act limits at places not shown on the deposited plans. These require the highway authority's approval, not to be unreasonably withheld. Paragraph 1(9) provides for the matters which the highway authority must take into account.

214 Paragraph 1(10) and (11) establishes that, in the event that the highway authority does not respond within 28 days, it is assumed to have approved the plans or given consent.

215 Paragraph 1(12) provides that, if the location of access works is moved as a result of paragraph 1(3), then paragraph 12(5), (7) and (8) apply as if the new location were shown on the deposited plans.

Part 2: Interference with highways

Stopping-up

216 Paragraph 2 authorises the nominated undertaker to stop up certain highways permanently. The highways which may be stopped-up for this purpose are listed in table 1 or 2 of Part 4. Under paragraph 2(2), subject to certain restrictions, highways specified in table 1 in Part 4 of the Schedule may be stopped up without providing a substitute. Under paragraph 2(3) highways specified in table 2 may be stopped up on provision of an alternative.

217 Paragraph 3 contains provision for the nominated undertaker to stop up a bridleway or footpath within the Act limits which is not mentioned in table 1 or 2 (see Part 4 of the Schedule), for the purposes of carrying out the Phase One works.

218 Paragraph 3(2) provides that this can only be done if the stopping up has been confirmed by the appropriate Ministers, namely the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs acting jointly.

219 Paragraph 3(3) establishes the conditions under which the appropriate Ministers can confirm the proposed stopping up. So long as the three conditions listed are satisfied, the application must be granted. Paragraph 3(4) states that the appropriate Ministers must notify the nominated undertaker of the basis on which the application was granted.

220 Paragraph 3(5) stipulates that if a substitute footpath or bridleway is to be provided by the

nominated undertaker, the original cannot be stopped up until the substitute is available.

- 221 Paragraph 3(6) provides that, before the stopping up is confirmed, the nominated undertaker must publish certain details in a local newspaper. This is to include particulars about how affected parties can make representations about the proposals. Under paragraph 3(8), these representations must be considered before the appropriate Ministers confirm an application.
- 222 Paragraph 3(7) states that the nominated undertaker must provide copies of the newspaper notice to every local authority whose area is affected, and place it at each end of the bridleway or footpath.
- 223 Paragraph 4 provides that where any highway is stopped up under paragraph 2 or 3, all rights of way over or along it are extinguished. In addition, it provides that the Secretary of State may appropriate and use the site of it without payment if the land on both sides is land owned by the Secretary of State, but by virtue of paragraph 4(4) this does not include mines or minerals unless extracted or used in constructing Phase One.
- 224 Under paragraph 4(2) and (3) compensation is payable for losses arising from the extinguishment of a private right of way. Such compensation is determined in accordance with Part 1 of the Land Compensation Act 1961 if there is a dispute.
- 225 Paragraph 4(5) applies Part 3 of Schedule 2 to the Acquisition of Land Act 1981, concerning the working of mines, to land beneath a highway stopped up under paragraph 2 or 3 which the Secretary of State is entitled to appropriate, with modifications.

Permanent obstruction

- 226 Paragraph 5 provides that the power to carry out ancillary works under section 2(1), (3) and (5) may be exercised in a way that permanently obstructs the highway. Paragraph 5(1) requires the consent of the highway authority for this, which is not to be unreasonably withheld. If this is disputed, paragraph 5(2) provides that the matter must be determined by arbitration or by the Secretary of State.
- 227 Paragraph 5(3) provides that consent will be assumed to have been given after 28 days, unless the authority notifies the applicant to the contrary within that period.

Temporary interference

- 228 Paragraph 6 enables the nominated undertaker temporarily to interfere with any highway for the purpose of carrying out the Phase One works. Under paragraph 6(1), it may stop up, alter or divert the highway, divert traffic from it or prevent persons passing along it, break up or interfere with it or temporarily remove street furniture. Under paragraph 6(2), the nominated undertaker must provide reasonable access for pedestrians to or from premises abutting the highway.
- 229 Where the highway is specified in table 3 in Part 4 of the Schedule, under paragraph 6(3) and (4) the relevant authority must be consulted with respect to public safety and convenience before the power is exercised. In other cases, paragraph 6(5) requires the consent of the relevant authority to be obtained in writing by the nominated undertaker prior to the power being exercised.
- 230 Paragraph 6(6) and (9) provide that the relevant authority may not unreasonably withhold such consent, but may apply reasonable conditions in the interests of public safety or convenience, and that any disputes about this must be determined by arbitration or by the Secretary of State.
- 231 Paragraph 6(7) provides that consent will be assumed to have been given after 28 days, unless the authority notifies the applicant to the contrary within that period.

232 Paragraph 6(8) modifies the effect of paragraph 6(7) for GLA side roads and roads designated under section 60(1) or 61(1) of the Traffic Management Act 2004. In these cases, if the consent does not relate to the temporary removal of street furniture the highway authority has 42 days within which to make a response, rather than 28.

233 Paragraph 6(10) provides that a highway does not have to be reinstated after its temporary closure if that same highway is then permanently stopped up under paragraph 2(1) or 3(1).

Street works

234 Paragraph 7 allows the nominated undertaker to place, maintain, reposition and remove apparatus in the highway, and also carry out works for the purpose. Paragraph 7(2) provides that 'apparatus' has the same meaning as in Part 3 of the New Roads and Street Works Act 1991.

235 Paragraph 8 treats certain works carried out on highways as major highway works for the purposes of Part 3 of the New Roads and Street Works Act 1991.

236 Paragraph 8(2) provides that where highway works for Phase One are carried out by the highway authority under a delegation agreement under paragraph 12(2) of the Schedule, the normal rules applying to highway authorities about whether the works are major highway works are to apply.

Working sites in highways

237 Paragraph 9 provides that a highway temporarily stopped up under paragraph 6 may be used as a work site for HS2 where it is within the Act limits.

Part 3: Construction and maintenance of highways

238 Part 3 contains supplementary provision about the construction and maintenance of highways.

Construction and alteration

239 Under paragraph 10(1), if a new highway is constructed, or an existing highway altered (except by carrying out street works to which the New Roads and Street Works Act 1991 applies), this must be done to the reasonable satisfaction of the highway authority. By virtue of paragraph 10(2) and (3), within 28 days of a request by the nominated undertaker, the highway authority must provide a certificate of their satisfaction or give notice of their refusal to issue such a certificate. If they do not do so within that period, then a certificate is treated as having been issued.

240 If a dispute arises over the issuing of a certificate, paragraph 10(4) provides that this must be settled by arbitration or by the Secretary of State.

241 Paragraph 11 relates to the realignment or construction of a highway which comprises a carriageway. Paragraph 11(2) requires this to be done in accordance with plans approved by the highway authority, such approval not to be unreasonably refused. If a dispute arises about this, under paragraph 11(3) it must be settled by arbitration or by the Secretary of State.

242 Paragraph 11(4) provides that approval is to be treated as having been given after 28 days, unless the authority notifies the applicant to the contrary within that period.

243 Paragraph 12 enables the nominated undertaker to enter into agreements with highway authorities about the construction and alteration of highways to be stopped up or interfered with under the Act, including agreements delegating the nominated undertaker's powers concerning the proposed works.

244 Paragraph 13 provides that where a work appears to the Secretary of State to constitute the

realignment or extension of a trunk road or motorway, then the Secretary of State may by order provide that the extended or realigned portion is to become a trunk road or motorway on a day specified in or under the order, and (in the case of a motorway) the classes of traffic which may use it.

Maintenance

- 245 Paragraph 14 relates to the maintenance of a new highway, or a highway altered other than by carrying out street works under the New Roads and Street Works Act 1991. Paragraph 14(2) and (3) provide that unless otherwise agreed the nominated undertaker is responsible for maintaining the new or altered highway for 12 months from the later of the date of practical completion of the work or the date it opens for use by the public, and after that the duty to maintain falls to the highway authority. However, under paragraph 14(8) this does not apply to the structure of bridges over, or tunnels under, railways of the nominated undertaker.
- 246 Paragraph 14(4) requires the highway authority, unless otherwise agreed with the nominated undertaker, to ensure (during the period that the nominated undertaker is responsible for maintenance) that so far as reasonably practicable safe passage is maintained along the highway with regard to snow and ice.
- 247 Paragraph 14(5) requires the highway authority to certify the date on which the highway was practically complete or on which it was first open for public use. Paragraph 14(6) provides that, if there is a dispute about this, it must be determined by arbitration, or by the Secretary of State.
- 248 Paragraph 14(9) makes clear that the paragraph does not affect section 87 of the New Roads and Street Works Act 1991, which enables a local authority to declare prospectively maintainable highways.
- 249 Under paragraph 15, where the nominated undertaker is responsible for maintaining a bridge carrying a highway constructed or altered under the Act over a railway, it may enter into an agreement with the body responsible for maintaining the highway, delegating to that body the function of maintaining the bridge.
- 250 Under section 58 of the Highways Act 1980, highway authorities responsible for maintaining a highway have a defence for any action against them for non-repair if they can prove they have proper inspection and maintenance systems in place. Paragraph 16 applies this to the maintenance responsibilities of the nominated undertaker under paragraph 4.
- 251 Paragraph 17 modifies the maintenance duties for bridges applying under section 46 of the Railways Clauses Consolidation Act 1845, to bring them into line with current practice (so that the highway authority is responsible for maintaining the surface of the highway and the nominated undertaker is responsible for the bridge).

Bridges carrying highways

- 252 Paragraph 18 applies to Phase One the same rules under sections 116 and 117 of the Transport Act 1968 concerning bridges over railways as apply to the national rail network.

Part 4: Tables relating to Part 2 of Schedule

- 253 This Part contains tables that are relevant to the powers exercisable under Part 2 of this Schedule.

Schedule 5: Acquisition of land for particular purposes

- 254 Schedule 5 sets out purposes for which the land set out in the table in the Schedule (which is the land within the limits of land to be acquired or used, as shown on the Act plans) may be acquired. The table therefore gives an indication of the purposes for which the land in

question may be acquired or used (for example for a worksite or for environmental mitigation), but the purposes for which the land may be acquired are not limited to those specified in the table.

Schedule 6: Acquisition of land: application of compulsory purchase legislation

255 Schedule 6 makes provision as regards how certain legislation regarding compulsory purchase is to apply to compulsory acquisition under the Act.

Land Clauses Consolidation Act 1845

256 Paragraph 1 disapplies the Land Consolidation Clause Act 1845 in relation to the compulsory purchase of land by the Secretary of State under the Act.

Compulsory Purchase Act 1965

257 Paragraph 2 makes modifications to the Compulsory Purchase Act 1965 which is to apply to compulsory acquisition under the Act instead of the 1845 Act. Paragraph 2(2) provides that section 4 of the 1965 Act (which provides a three year time limit on the exercise of the power of compulsory purchase) is not to apply. A time limit is instead provided by section 10. Paragraph 2(4) makes a change which is consequential on that made by paragraph 2(2).

258 Paragraph 2(3) extends the period between serving a notice to treat and entering and taking possession (in the case of subsoil or where only an easement or other right over land is acquired) from 14 days to one month and from 14 days to three months (in the case of other acquisitions of land).

259 Paragraph 2(5) modifies the procedure in the 1965 Act for obtaining a right of entry by means of the payment into court of compensation and the giving of a bond to the owner in respect of any compensation awarded by removing the requirement for sureties to be provided by the acquiring authority with the bond.

Compulsory Purchase (Vesting Declarations) Act 1981

260 Paragraph 3 makes modifications to provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 for cases where a vesting declaration is made under the Act and not under a compulsory purchase order.

Acquisition of Land Act 1981

261 Paragraph 4 makes modifications to provisions of the Acquisition of Land Act 1981 which are necessary to make those provisions apply to compulsory acquisition under Act powers as they apply to acquisition of land under a compulsory purchase order.

Schedule 7: Acquisition of rights in land: power to impose restrictive covenants

262 Schedule 7 specifies the land over which restrictive covenants may be imposed for the purposes specified in relation to the land in column (3) of the table.

Schedule 8: Land in which only rights may be acquired compulsorily

263 Schedule 8 specifies the land in respect of which the compulsory purchase power in section 4(1) is limited to the acquisition of rights for the purposes specified in relation to the land in column (3) of the table.

Schedule 9: Acquisition of rights in land: application of compulsory purchase legislation

Compulsory Purchase Act 1965 and compensation enactments

- 264 Schedule 9 makes modifications to provisions of compulsory purchase legislation, which refer to the acquisition of land, to make them apt for the acquisition of rights and the imposition of restrictive covenants. The effect of the modifications is that the regime under that legislation will apply where the powers to acquire land under section 4(1) are used to acquire existing rights, to create rights or to impose restrictive covenants.
- 265 Paragraphs 1(a) and 2 make specific modifications to provisions of the Compulsory Purchase Act 1965 and the Land Compensation Act 1973 which are needed to make them apply where rights are acquired, or restrictive covenants imposed, in exercise of the compulsory acquisition power under section 4(1).

Compulsory Purchase (Vesting Declarations) Act 1981 and compensation enactments

- 266 Paragraphs 3(1)(a) and 4 make specific modifications to provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 which are similarly needed to make them fit where rights are acquired, or restrictive covenants imposed, under that power. In addition paragraphs 1(b) and 3(1)(b) provide that enactments relating to compulsory acquisition are to have effect with such other modifications as may be necessary to make them apt where rights are acquired, or restrictive covenants imposed, under that power.

Schedule 10: Acquisition of part of land only

- 267 Schedule 10 applies where the Secretary of State proposes only to acquire part of land and invokes the procedure under section 6 (instead of the procedure that would otherwise apply under the Compulsory Purchase Act 1965) under which landowners may seek the whole of their land to be acquired rather than part of it only. Schedule 10 sets out the alternative procedure.
- 268 In cases where the Secretary of State serves a notice to treat in respect of part of an interest in land held by the landowner and invokes the alternative procedure in this Schedule, paragraph 1(1) provides that the landowner has 21 days within which to serve a counter-notice stating that the landowner does not wish to sell the part of the land, but is willing to sell the whole of it.
- 269 Paragraph 1(2) provides that if no such notice is given, the landowner is required to sell the part of the land to which the notice to treat relates.
- 270 However, paragraph 1(3) provides that if the Secretary of State agrees that the whole of the land should be purchased as proposed by the counter-notice, then the notice to treat will apply to the whole of the land as opposed to just the part of it.
- 271 Paragraph 1(4) provides that if the Secretary of State does not agree to take the whole of the land as proposed by the counter-notice, the matter is to be referred to the Upper Tribunal (“the Tribunal”).
- 272 Paragraph 2 makes provision for the process by which the Tribunal is to determine whether part of the property or the whole should be acquired. Paragraph 2(1) and (2) relate to cases where the Tribunal determines that only the part of the land contained in the original notice to treat needs to be acquired. These are cases where the Tribunal concludes that the land can be sold without material detriment to the remaining property which the landowner has proposed should be acquired and, where the land which is proposed to be compulsorily acquired is garden land, that it can be taken without seriously affecting the amenity of the house to which

These Explanatory Notes relate to the High Speed Rail (London - West Midlands) Act 2017 (c. 7) which received Royal Assent on 23 February 2017.

it belongs.

273 Paragraphs 2(3) and (4) provide that where the Tribunal determines that the part of the land proposed to be compulsorily acquired cannot be taken without material detriment to the remainder of the land but that the material detriment only affects part of the remaining land, the Secretary of State must also acquire the affected part of the remaining land. However, if the land to be compulsorily acquired is garden only land and the Tribunal determines that it cannot be taken without seriously affecting the amenity or convenience of the house, the whole of the land must be taken.

274 Paragraph 2(5) provides that if the Tribunal determines that none of the land to be compulsorily acquired can be taken without material detriment to the remaining land, all the remaining land must be taken.

275 Paragraph 2(6) defines what constitutes 'garden only land'. This is land which consists of or includes all or part of a park or garden belonging to a house, but not the house itself.

276 Paragraph 3 applies where the Tribunal decides that more or less land should be purchased than was required in a notice to treat. Paragraph 3(1) provides that, should this occur, the Secretary of State may withdraw the notice within 6 weeks of the decision.

277 Where a notice is withdrawn paragraph 3(2) provides that compensation is payable to the person on whom the notice is served, should they suffer any loss as a result of the notice's service and withdrawal. If the amount is not agreed it is to be determined by the Tribunal.

278 Paragraph 3(3) provides that, where only part of a house, building, factory or garden is required to be sold the Secretary of State must pay compensation to the landowner for any loss due to the severance of that part as well as the value of the interest acquired.

279 Paragraph 3(4) provides that the provisions relating to compulsory acquisition have effect as regards any additional land required to be sold under Schedule 10 regardless of whether the Secretary of State otherwise has power to acquire the land under the provisions of this Act.

Schedule 11: Land with restrictions relating to surface acquisition

Restriction of power of compulsory acquisition to land under the surface

280 Schedule 11 restricts the power of compulsory acquisition under section 4(1) to subsoil which is 9 metres or deeper below surface level (in the case of land specified in the table in paragraph 1).

Restriction of power of compulsory acquisition to land under the surface or rights of passage

281 It also restricts the power of acquisition under section 4(1) to subsoil which is 9 metres or deeper below surface level and/or rights of passage (in the case of the land specified in paragraph 2).

Supplementary

282 However, paragraph 3(1) provides that the power of compulsory acquisition may be exercised so far as it involves imposing restrictive covenants over the land specified in those tables; and paragraph 3(2) provides that the restrictions on the power of compulsory acquisition do not apply in relation to cellars or other underground constructions forming part of a building which is within the Act limits, fronts onto a highway and is subject to compulsory acquisition under section 4(1).

Schedule 12: Highways: restrictions on powers to use subsoil and acquire land

283 Schedule 12 contains the table referred to in section 9. The table specifies the highway land in respect of which the power of compulsory acquisition or to appropriate subsoil is not exercisable.

Schedule 13: Right to require acquisition where time limit extended

284 Schedule 13 sets out the arrangements to apply if the Secretary of State makes an order under section 10(2) extending the time limit for exercising the power of compulsory acquisition under section 4(1). The Schedule enables the owner or a qualifying lessee of land to which the order relates to bring the period of uncertainty to an end.

285 Paragraph 2 provides that the owner or a lessee holding an interest under a lease which has at least 21 years to run may serve the Secretary of State with a notice stating that the person in question wishes the Secretary of State to acquire the person's interest in the land. The Secretary of State must then within three months of receipt of the notice either agree to acquire the person's interest in the whole or part of the land, exercise the applicable compulsory acquisition powers in respect of the person's interest in the whole or part of the land or notify the person that the Secretary of State does not intend to proceed with the purchase of the person's interest in any of the land.

286 Paragraph 3 provides that if the Secretary of State fails to comply with those requirements or notifies the person that the Secretary of State does not intend to purchase the land, the compulsory acquisition powers cease to be exercisable in respect of the person's interest. Where the Secretary of State acquires the person's interest in only part of the land specified in the notice, the compulsory acquisition powers cease to be exercisable in respect of the person's interest in the remainder of the land.

287 The provisions of the Schedule do not apply where the powers of compulsory acquisition are only exercisable in respect of subsoil more than 9 metres below the surface of the land.

Schedule 14: Amendments consequential on the Housing and Planning Act 2016

288 The amendments to the Act that are set out in Schedule 14 are consequential on the compulsory purchase provisions contained in Part 7 of the Housing and Planning Act 2016. The amendments would translate the effect of the changes to compulsory purchase legislation made by that Act to the compulsory purchase regime that is applied to this Act.

Schedule 15: Extinction of rights over land

Land to which Schedule applies

289 Schedule 15 makes provision for the extinction of private and general rights over land within the Act limits either held by the Secretary of State, or in which the Secretary of State has acquired rights or imposed restrictive imposed, for Phase One purposes (paragraph 1).

Private rights

290 Paragraphs 2 to 4 deal with the extinction of private rights as defined by paragraph 2(3). These include private rights of way, rights of common and restrictions as to the user of land.

291 Paragraph 2 provides the general position that private rights over land within the Act limits which is held by the Secretary of State for Phase One purposes are extinguished. Where only rights are acquired, or restrictive covenants imposed, for Phase One purposes in relation to

land within the Act limits, private rights are only extinguished if and to the extent that they are inconsistent with the exercise of the acquired right or the restrictive covenant.

292 However, paragraph 3(3) sets out certain rights to which paragraph 2 does not apply and are not therefore extinguished. These include rights of statutory undertakers in relation to their apparatus

293 Further, paragraph 3(1) and (2) enable the Secretary of State to direct that any particular private right is not to be extinguished under paragraph 2, either wholly or in part.

294 Paragraph 4 provides that compensation is payable to anyone who suffers loss as a result of the extinguishment of private rights under the Schedule, with disputes about such compensation to be determined under the Land Compensation Act 1961. This does not apply to rights of common in respect of which compensation is payable under Schedule 4 to the Compulsory Purchase Act 1965.

295 Paragraphs 5 and 6 deal with the extinction of general rights over land, as defined by paragraph 5(3). These include rights of access to, or other public rights over, land under any enactment and rights exercisable under trusts over commons, town or village greens, open space or allotments.

General rights

296 Paragraph 5 provides that general rights over land within the Act limits which is held by the Secretary of State for Phase One purposes are extinguished. Where only rights are acquired, or restrictive covenants imposed, for Phase One purposes in relation to land within the Act limits, general rights are only extinguished to the extent that they are inconsistent with the exercise of the acquired right or the restrictive covenant.

297 Paragraph 6 enables the Secretary of State to direct that any particular general right is not to be extinguished under paragraph 5, either wholly or in part.

Meaning of "the appropriate time"

298 Paragraph 7 provides when the extinction of private or general rights under the Schedule is to take effect. Provision is made for different times to apply in different specified circumstances.

Amendments to registers of common land or town or village greens

299 Paragraph 8 makes provision for registers of common land or town or village greens to be updated to reflect the extinguishment under the Schedule of rights over such land. The Secretary of State must notify the commons registration authority where land registered as a common or as a town or village green within the Act limits is acquired for Phase One purposes or where rights are acquired, or restrictive covenants are imposed, in relation to such land for those purposes. The prescribed information to be given by the Secretary of State to the commons registration authority includes details of any exchange land to be given. The commons registration authority must then make any necessary consequential amendments to the relevant register.

Schedule 16: Temporary possession and use of land

Part 1: Temporary possession for construction of works

300 Schedule 16 allows the nominated undertaker temporarily to take possession, and make use of, land for Phase One purposes. Provision is made for two cases, land which is identified in the table in Part 4 of the Schedule ("the table land") and other land within the Act limits.

Right to enter upon and take possession of land

301 Paragraphs 1(1) and 2(2) to (4) deal with the table land. The table in Part 4 sets out specific

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purposes for which the table land may be used. This table therefore gives an indication of the purposes for which certain parcels of land may be used temporarily (for example, for environmental mitigation, utility diversions, highway access or work sites) but the purposes are not exhaustive and the land can be used for other Phase One purposes.

- 302 Paragraphs 1(1) and 2(1) deal with land within the Act limits other than the table land. Paragraph 1(2) provides that the nominated undertaker may take temporary possession of such land. However, this is subject to the exceptions in paragraph 2(1). Temporary possession of land cannot be taken if the power of compulsory acquisition under section 4(1) is restricted to the acquisition of rights in the land or the acquisition of subsoil or under-surface or both the acquisition of sub-soil or under-surface and of rights of passage.

Exceptions

- 303 In addition temporary possession cannot be taken of land in respect of which the power of compulsory acquisition under section 4(1) has been exercised either by the service of a notice of entry under the Compulsory Purchase Act 1965 or by the making of a vesting declaration under the Compulsory Purchase (Vesting Declarations) Act 1981.
- 304 Paragraph 2(2) to (4) provides that the powers of compulsory acquisition under paragraph 4(1) which are exercisable in relation to the table land are restricted to the acquisition of rights (in which case the land must also be included in the table in Schedule 8), the acquisition of subsoil or under-surface, of rights of passage (in which case the land must also be included in the table in paragraph 1 or 2 of the Schedule 11) or the imposition of restrictive covenants (in which case the land must also be included in the table in Schedule 7).

Powers exercisable on land of which temporary possession has been taken

- 305 Paragraph 3 provides that where temporary possession is taken the nominated undertaker may clear the site and construct certain works on the land including landscaping and other environmental mitigation works involving the planting of trees and shrubs and the provision of replacement habitat for wild animals.

Procedure and compensation

- 306 Paragraph 4 requires that at least 28 days' notice must be given to the owners and occupiers of the land before possession is taken and that the nominated undertaker cannot remain on the land for longer than one year from the completion of the work for which possession was taken unless the owners agree otherwise or the land has been compulsorily acquired. Compensation is payable for any loss suffered as a result of the exercise of the powers, with any disputes about such compensation to be determined under the Land Compensation Act 1961.
- 307 Paragraph 5 requires the nominated undertaker, before giving up possession of any land used under paragraph 1, to put the land in question back into such condition as may be provided in a scheme agreed between the nominated undertaker, the owners of the land and the local planning authority, or in absence of agreement, determined by the appropriate Ministers (for these purposes defined as the Secretary of State for Transport and the Secretary of State for Communities and Local Government, acting jointly).
- 308 The paragraph also sets out what such a scheme may and may not require and makes provision for the relevant planning authority to take action under a scheme where the nominated undertaker fails to do so and to be reimbursed for expense incurred in doing so.

Part 2: Temporary possession for maintenance of works

Right to enter upon and take possession of land

- 309 Paragraph 7 allows the nominated undertaker, during the maintenance period for any work (defined as the period beginning when the work is completed and ending five years after the date on which the work is brought into general use), to enter upon and take possession of land within the Act limits and within 20 metres of any work within Schedule 1, and to construct temporary works, if reasonably required for maintaining the work.
- 310 This power does not extend to any house or garden, any other structure which is occupied or land where the power of compulsory acquisition under section 4(1) is restricted to the acquisition of rights, subsoil or under-surface of land, or both subsoil and under-surface and rights of passage, or the imposition of restrictive covenants (sub-paragraph 2).

Procedure and compensation

- 311 Paragraphs 7(3) and 8 provide safeguards relating to the exercise of the power in paragraph 7. The undertaker must give at least 28 days' notice to the owners and occupiers of the land before possession is taken, may only remain in possession of such land as long as is reasonably necessary to carry out the maintenance works and must, before giving up possession, restore the land to the reasonable satisfaction of its owners. Compensation is payable for any loss suffered as a result of such use, with any disputes about such compensation to be determined under the Land Compensation Act 1961.

Part 3: Suspension of rights and enforcement

Suspension of rights relating to land

- 312 Paragraph 9 provides for private rights (including rights of way, rights of common and restrictions as to user) over land of which temporary possession is taken under the Schedule to be suspended during the period of possession. This is subject to any direction to the contrary made by the nominated undertaker. Compensation is payable to anyone who suffers loss as a result of any such suspension, with any disputes about such compensation to be determined under the Land Compensation Act 1961.
- 313 Paragraph 10 similarly provides for all general rights over land of which temporary possession is taken to be suspended during the period of possession. This is subject to any direction to the contrary made by the nominated undertaker. The general rights to which paragraph 10 applies include rights of access to, or other public rights over, the land under any enactment and rights exercisable under trusts over commons, town or village greens, open space or allotments.

Enforcement

- 314 Paragraph 11 makes provision for the enforcement of any possession required under Schedule 16, should the owner or occupier of the land in question refuse to give up, or hinder the taking of, possession. The provision is similar to that applying to the taking of possession following notice of entry on a compulsory purchase of land.

Part 4: Land which may be occupied and used for construction of works

- 315 The table in Part 4 identifies the land referred to in paragraph 1(1) of which temporary possession may be taken.

Schedule 17: Conditions of deemed planning permission

Part 1: Conditions

Introductory

316 Schedule 17 sets out conditions which apply to the planning permission granted by section 20.

Condition relating to building works

317 Where a building (other than a temporary building) is to be constructed, altered or extended under the Act, paragraph 2 requires this to be done in accordance with plans and specifications approved by the relevant planning authority (which in a non-unitary area is the district council). Paragraph 2(3) and (4) enable the authority, when approving these, to require plans and specifications showing additional details of the building works to be submitted, in order to permit approvals of the plans and specifications to be staged. Paragraph 2(5) and (6) set out the grounds on which approval can be refused or conditions applied. For both qualifying and non-qualifying authorities, these are that details of the design or external appearance of the building works ought to be modified to preserve the local environment or local amenity and are reasonably capable of being modified, or that the development ought to be resited within its permitted limits. Qualifying authorities may in addition refuse approval or apply conditions on road and heritage grounds. Under paragraph 2(7), conditions also require the agreement of the nominated undertaker.

318 Where the relevant planning authority is a qualifying authority (see Part 2 of Schedule 17, and the commentary below relating to that Part), paragraph 3 requires similar approvals in relation to other construction works which are part of Phase One, namely certain road vehicle parks, earthworks, screens, fences, lighting, transformers, telecommunications masts and pedestrian accesses. Similar provision to that in paragraph 2 about additional details, grounds of refusal and conditioning are applied to these construction works.

Condition relating to matters ancillary to development

319 Paragraph 4 sets out certain construction arrangements which require the approval of the relevant planning authority if that authority is a qualifying authority, including the handling of re-useable spoil or top soil, storage sites, construction camps, screening, artificial lighting, the suppression of dust and mud on the highway. The paragraph also sets out the grounds on which approval can be refused or conditions applied. Under paragraph 4(7), conditions require the agreement of the nominated undertaker.

Condition relating to other construction works

320 Paragraph 5 enables the Secretary of State, after consulting the affected planning authorities, to issue a class approval for these construction arrangements, except in relation to construction camps. Where a class approval is in effect, by virtue of paragraph 5(5) the nominated undertaker does not need to seek specific approval from the planning authority under paragraph 4, although if the circumstances of the case require it the nominated undertaker can still apply for that approval by virtue of paragraph 5(6) and (7).

Condition relating to road transport

321 Under paragraph 6, if the relevant authority (which is the county council in a non-unitary area) is a qualifying authority, it has some control over the routes by which large goods vehicles travel by road to and from working, storage and waste disposal sites. Paragraph 6(4) provides that this does not apply to transport on trunk roads or motorways, nor to sites which have less than 24 large goods vehicle movements a day. The paragraph also sets out the grounds on which approval can be refused or conditions applied. Under paragraph 6(6), conditions require the agreement of the nominated undertaker.

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Conditions relating to waste and soil disposal and excavation

322 Where the relevant planning authority is a qualifying authority, paragraph 7 requires waste and spoil disposal and the excavation of bulk materials from borrow pits to be done in accordance with plans and specifications approved by that authority (which in a non-unitary area is the county council). Paragraph 7(4) and (5) enable the authority, when approving these, to require plans and specifications showing additional details to be submitted, in order to permit approvals of the plans and specifications to be staged. Paragraph 7(6) to (9) set out the grounds on which approval can be refused or conditions applied. Under paragraph 7(10), conditions require the agreement of the nominated undertaker.

323 Paragraph 8 further provides that before development to which paragraph 7 applies is begun, the planning authority must approve a restoration scheme. Under paragraph 8(3) approval may only be refused on the ground that the scheme ought to be and is reasonably capable of being modified. Paragraph 8(5) enables the scheme to make provision about aftercare.

Conditions on bringing scheduled works and depots into use

324 Paragraph 9 provides that where the relevant planning authority (which is the district council in non-unitary areas) is a qualifying authority, scheduled works which are not underground and certain depots cannot be brought into use without the approval of the authority. Under paragraph 9(4), approval must be granted if no further environmental mitigation is required or the authority has approved a mitigation scheme submitted by the nominated undertaker. Paragraph 9(5) sets out the grounds on which approval of such a scheme may be refused or conditions imposed.

325 Paragraph 10 requires such a mitigation scheme to be implemented in accordance with any conditions subject to which approval was given.

Condition relating to discontinuation of ancillary operations

326 Paragraph 11 requires operations on ancillary works sites to cease as soon as reasonably practicable after the scheduled works to which they relate have been completed.

Condition relating to site restoration

327 After such cessation, paragraph 12 requires the site to be restored in accordance with a scheme agreed with the relevant planning authority (which is the district council in a non-unitary area). Under paragraph 12(3) this must be submitted by the nominated undertaker within four months of the cessation. By virtue of paragraph 12(6), a scheme may reserve particulars for subsequent agreement.

328 If no restoration scheme or reserved particular is agreed within the period required (or as extended by agreement by the nominated undertaker and planning authority), under paragraph 12(4) and (7) it is determined by the Secretary of State for Communities and Local Government and Secretary of State for Transport acting jointly. Paragraph 12(8) makes provision about costs if that happens.

329 Under paragraph 12(9), the requirement for a restoration scheme does not apply where the Act imposes other requirements with respect to restoration.

Part 2: Qualifying authorities

Specification of qualifying authorities

330 Paragraph 13 requires the Secretary of State, by means of an order, to name “qualifying authorities” for the purposes of Schedule 17. These are the local planning authorities which have given the Secretary of State satisfactory undertakings about the handling of planning

requests. These authorities are identified in regulations made immediately after Royal Assent.

331 Paragraph 13 also allows the Secretary of State to make orders revoking “qualifying authority” status and to make subsequent naming orders in certain circumstances. Before making such an order, the Secretary of State is to consult the nominated undertaker and, if it is not the body requesting the order, the relevant local planning authority.

Transition

332 Paragraph 14 allows for any order under paragraph 13 to set out any transitional arrangements that may be necessary (for example, were a local planning authority to cease to be a qualifying authority for the purposes of the Act whilst a number of undetermined planning applications were before it).

Part 3: Approvals: supplementary

Requests for planning approval

333 This part of the Schedule deals with supplementary matters concerning the giving of approvals under Part 1, including appeals.

334 Paragraph 15 provides that any approval under Part 1 may only be given at the request of the nominated undertaker.

335 Paragraph 16 provides that the local planning authority is not required to entertain a request for approval unless the nominated undertaker has first submitted a programme of the approvals it intends to seek from the authority, and an explanation of how the matters dealt with in the request fit into the wider Phase One scheme. This does not apply to a request for approval of additional details.

Fees for requests for approval

336 Paragraph 17 enables the Secretary of State for Transport and the Secretary of State for Communities and Local Government jointly to make regulations about fees payable by the nominated undertaker when making requests for approval.

Consultation on requests for approval

337 Paragraph 18 sets out requirements for consultation where a request relates to things which may affect certain conservation, recreational or heritage matters. Where this is the case, the planning authority must consult Natural England, the Environment Agency or English Heritage, as appropriate, before giving an approval.

Directions restricting powers of approval and compulsory reference of requests for approval

338 Paragraphs 19 and 20 set out a mechanism for the Secretary of State for Transport and the Secretary of State for Communities and Local Government to issue directions restricting a planning authority’s power to approve under the Schedule and to “call in” a particular request for approval.

Non-material changes to approvals

339 Paragraph 21 enables a planning authority at the request of the nominated undertaker to make a non-material change to any approval it has previously given under Part 1. This is to allow changes which do not have material planning significance to be made without the necessity for the nominated undertaker to make a fresh request for approval. It is similar to the power available to planning authorities in respect of “normal” planning permissions in section 96A of the Town and Country Planning Act 1990.

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Appeals

- 340 Paragraphs 22 to 25 make provision about appeals to the Secretary of State for Transport and the Secretary of State for Communities and Local Government acting jointly, where the nominated undertaker is aggrieved by a decision of the planning authority on a request for approval. The nominated undertaker may appeal within 42 days of the decision or of the period for making a decision having ended. The period for making a decision is 8 weeks unless a longer period is agreed between the nominated undertaker and the planning authority. The Secretaries of State may make regulations prescribing the form to be used when appealing, and about the decision period in cases where fees are paid by cheque.
- 341 An appeal is determined by an appointed person unless the Secretaries of State direct that they should decide it. An appeal is decided by written representations unless the person deciding it thinks a hearing is required.
- 342 Under paragraph 25(2) to (4), the Secretary of State for Transport and the Secretary of State for Communities and Local Government may make regulations about the procedure to be followed with respect to appeals.

Guidance by Secretary of State

- 343 Paragraph 26 enables the Secretary of State for Transport and the Secretary of State for Communities and Local Government to give guidance to planning authorities about the exercise of their functions under the Schedule. The authorities must have regard to the guidance.

Part 4 - Supplementary and general

Mayoral development corporations

- 344 Paragraphs 27 and 28 apply to Mayoral development corporations and allow the Secretary of State to make regulations modifying the operation of the Schedule in respect of them.

Regulations and orders

- 345 Paragraph 29 makes supplementary provision about regulations and orders under the Schedule. These are to be made by statutory instrument. Regulations, and orders changing the list of qualifying authorities after the first order specifying them has been made, are subject to annulment by resolution of either House of Parliament.

Interpretation

- 346 Paragraph 30 is about the interpretation of certain expressions used in the Schedule.

Schedule 18: Listed buildings

- 347 Schedule 18 concerns how legislation in respect of listed buildings under the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the 1990 Act") applies to the Phase One works.

Buildings authorised to be demolished, altered or extended

- 348 Paragraph 1 disapplies some of this legislation, and in particular the requirement for listed building consent, from the Phase One works in respect of the listed buildings set out in table 1, or which are listed on or after 30 September 2013.
- 349 Paragraph 1(3) provides that for the buildings specified in table 1 which have a description of works in column (3) of the table, the disapplication of the requirement for listed building consent only applies, as regards works of demolition or alteration which do not comprise works to maintain or restore their character or for the affixing of monitoring apparatus, to works falling within that description.

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Buildings authorised to be altered or extended for heritage or monitoring purposes

350 Paragraph 2 also disappplies some of this legislation, and in particular the requirement for listed building consent, in respect of the listed buildings set out in table 2, but only in respect of works to maintain or restore their character or for the affixing of monitoring apparatus. Table 2 is principally concerned with buildings within the settlement zone of the Phase One works.

Damage to buildings

351 Paragraph 3 disappplies section 59 of the 1990 Act, concerning things which might damage listed buildings, in relation to works carried out under the powers in this Act.

Power to disapply provision made by paragraphs 1 to 3

352 Paragraph 4 allows the Secretary of State, once the initial construction phase is over, by order made by statutory instrument to restore the normal regime under the 1990 Act for subsequent maintenance and alteration works.

Heritage partnership agreements

353 Paragraph 5 provides that partnership agreements under section 26A of the 1990 Act have effect subject to the works powers of the Act.

Inspection and observations of works

354 Paragraph 6 provides for anyone authorised by English Heritage to enter land on which a listed building is situated which is affected by certain Phase One works, to inspect those works. Under paragraph 6(2), these rights are not to be exercised if the nominated undertaker considers that it is not safe to do so. Paragraph 6(3) provides that any person exercising the rights will have to comply with directions from the nominated undertaker in respect of compliance with health and safety requirements.

Recording of building

355 Paragraph 7 requires the nominated undertaker to give notice to English Heritage of the demolition of a building that would require listed building consent, to allow recording prior to demolition. Under paragraph 7(2), at least eight weeks' notice is required, or longer if agreed by the nominated undertaker, though in cases of emergency shorter notice can be given, under paragraph 7(3).

356 Paragraph 8 provides that where notice has been given under paragraph 7 anyone authorised by English Heritage may enter the building concerned to do the recording during the notice period.

357 Paragraph 8(2) and (3) provide that this right is not to be exercised if the nominated undertaker considers that it not safe to do so, and any person exercising the right will have to comply with directions from the nominated undertaker in respect of compliance with health and safety requirements.

Interpretation

358 Paragraph 9 provides definitions of terms used in the Schedule. It also sets out two tables. Table 1 contains details of buildings authorised to demolished, altered or extended. Table 2 contains details of buildings authorised to be altered or extended for heritage or monitoring purposes.

Schedule 19: Ancient monuments

359 Schedule 19 concerns how legislation in respect of ancient monuments applies to Phase One works.

Disapplication of controls

360 Paragraph 1 modifies the application of the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”) in respect of Phase One works.

361 Paragraph 1(2) provides that section 2 of the 1979 Act does not apply to works authorised by the Act.

362 Paragraph 1(3) provides that the powers of entry conferred by sections 6(1), 6A(1) and 26 of the 1979 Act are not to be exercisable in relation to land used for or in connection with the carrying out of such works.

363 Paragraph 1(4) provides that the functions of a guardian under the 1979 Act and the provisions of an agreement under section 17 have effect subject to the powers of the Act.

364 Paragraph 1(5) disapplies section 19 of the 1979 Act where a monument is closed by the nominated undertaker, meaning that public access will no longer be available.

365 Paragraph 1(6) disapplies regulations under section 19(3) or (4A) of the 1979 Act in relation to Phase One works, so removing restrictions on things which may injure or disfigure the monument in question for Phase One. Paragraph 1(7) provides that the power conferred by section 19(6) of that Act to restrict access is not to be exercisable so as to prevent or restrict the undertaking of the works authorised by this Act.

366 Paragraph 1(8) prevents superintendence under section 25 of the 1979 Act of the carrying out of any of the Phase One works, and provides that English Heritage may not charge for advice in relation to the undertaking of these works.

367 Paragraphs 1(9) to (13) disapply sections 28 (offence of damaging certain ancient monuments), 35 (notice of operations in areas of archaeological importance), 39(1) (power to investigate in advance of operations notice), 42(1) (use of metal detectors) and 42(3) (removal of objects discovered by metal detector) of the 1979 Act, in relation to the activities authorised by this Act.

368 Paragraph 2 modifies the application of the National Heritage Act 1983 to the Phase One works. The power of entry conferred by section 36(1) of the 1983 Act is only to be exercisable in relation to land used, or intended for use, for or in connection with the Phase One works with the consent of the nominated undertaker, such consent not to be unreasonably withheld. Such consent may be given subject to compliance with any reasonable requirements or conditions imposed for reasons of safety or for the purpose of preventing interference with or delay to the works. Section 36(6) of the 1983 Act, which regulates the right to enter land for the purposes of record keeping, is not to apply to land on which works authorised by the Act are being carried out. Any disputes about this are to be determined by the Secretary of State for Transport and the Secretary of State for Culture, Media and Sport, acting jointly.

Power to disapply provision made by paragraphs 1 and 2

369 Paragraph 3 allows the Secretary of State, once the initial construction phase is over, by order made by statutory instrument to restore the operation of some of the provisions of the 1979 and 1983 Acts referred to above for subsequent maintenance and alteration works.

Inspection and observation of works etc

370 Paragraph 4 provides for anyone authorised by English Heritage to enter land at any reasonable time on which a scheduled monument is situated to inspect, observe or advise on

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the Phase One works as appropriate. Paragraph 4(2) and (3) provide that this right is not to be exercised if the nominated undertaker considers that it not safe to do so, and any person exercising the right will have to comply with directions from the nominated undertaker in respect of compliance with health and safety requirements.

Schedule 20: Burial grounds

371 Schedule 20 provides a regime for the removal of human remains and related monuments.

Notice of removal of remains or monument

372 Paragraph 1 requires the nominated undertaker to publish and display notice of the intention to remove any human remains or monuments before any such removal, and sets out what such a notice should contain including an explanation that a personal representative or relative may within 56 days apply for a licence to remove the remains and monument themselves. No notice is required in cases where the Secretary of State has notified the nominated undertaker that the Secretary of State is satisfied that the remains were buried more than 100 years ago and that no relative or representative of the deceased is likely to object. Nor is a notice required in cases where the nominated undertaker already holds a licence to remove human remains under section 25 of the Burial Act 1857. "Relative" is defined in paragraph 11.

Removal of remains under licence

373 Paragraph 2 sets out the circumstances in which the nominated undertaker must, upon written application by a relative or personal representative of the deceased, issue a licence to authorise the removal and reburial or cremation of the remains. The reasonable costs of removal and reburial must be paid by the nominated undertaker.

Removal of remains by nominated undertaker

374 Paragraphs 3 and 4 allow the nominated undertaker to remove human remains where no written application for a licence by a relative or personal representative is received, or where a licence has been issued but the remains have not been removed within 28 days. In cases where the Secretary of State has not given a notification under paragraph 1, the remains must, within 2 months, be buried in a place set apart for the purposes of burial or cremated in a crematorium. Where the Secretary of State has given a notification under paragraph 1, the period of two months is extended to 12 months, or such longer period as the Secretary of State may direct, to enable archaeological or other studies to be carried out where appropriate. In addition, the Secretary of State may dispense with the requirement to bury or cremate the remains but instead authorise them to be dealt with in some other manner (such as being kept in a museum). Provision is made under paragraphs 3(3) and (4) and 4(3) and (4) for cases where a question as to an applicant's entitlement to be granted a licence has been referred to a court but has not yet been determined.

375 Paragraph 5 applies where the nominated undertaker already holds a licence to remove remains under section 25 of the Burial Act 1857. In such a case the nominated undertaker may remove the remains but is subject to the same requirements as under paragraph 3 to bury them, cremate them or, where the Secretary of State is satisfied that the remains were buried more than 100 years ago and so directs, to deal with them in another manner specified by the Secretary of State.

Removal of monuments

376 Paragraph 6 sets out the arrangements to apply to the removal of any monument associated with human remains removed under the Schedule. Where a licence has been issued to the relative or personal representative of the deceased, the licensee may also remove any monument to the deceased, re-erect it elsewhere or dispose of it. The reasonable costs of

doing so must be paid by the nominated undertaker.

377 Paragraph 7 allows the nominated undertaker, where human remains have been removed by the nominated undertaker under the Schedule, also to remove any monument to the deceased. Where remains have been removed under a licence but a monument to the deceased has not been removed within 28 days, the monument may be removed by the nominated undertaker. The nominated undertaker can also remove any monument to a deceased person whose remains have been removed under a licence under section 25 of the Burial Act 1857 which is not removed by the licensee. Monuments which are removed by the nominated undertaker may be re-erected at the place where the remains are reburied or removed to some other appropriate place. If that is not done, they are to be broken up and defaced to prevent inappropriate use.

Records

378 Paragraph 8 sets out the records required to be kept by the nominated undertaker as respects human remains or monuments removed under the Schedule. Records as to the removal of remains must be provided to the Registrar General within two months of their removal and records of the removal of a monument must be provided both to the Registrar General and to the relevant local authority. In the case of remains where the Secretary of State has given a notification under paragraph 1 the period of two months is extended to 12 months, or such longer period as the Secretary of State may direct, to enable archaeological or other studies to be carried out where appropriate.

Discharge of functions by nominated undertaker

379 Paragraph 9 requires the nominated undertaker, in removing remains or monuments, to comply with any reasonable request of a relative or personal representative of the deceased to whom a licence has been granted under the Schedule. This is intended to apply to cases where a licence has been issued to a relative or personal representative but, because the right to remove the remains or monument has not been exercised, the nominated undertaker does so. Provision is made for cases where more than one licence has been granted under the Schedule.

380 Paragraph 10 enables the Secretary of State to make directions to the nominated undertaker with respect to the carrying out of functions under the Schedule.

Schedule 21: Water

381 Schedule 21 contains provisions relating to the treatment of water sources and features in relation to this Act. These generally disapply a restriction or requirement to obtain a further consent for works which are authorised by the Act.

Water abstraction and impounding

382 Paragraphs 1 and 2 disapply sections of the Water Resources Act 1991 with regards to works authorised by this Act. These provisions require consent for the abstraction or impoundment of water.

383 Paragraph 3 relates to loss or damage caused by the abstraction of water. Section 48A(1) of the Water Resources Act 1991, containing a duty not to cause loss, is disapplied in relation to any power authorised by this Act. However, if the nominated undertaker does cause loss or damage and the conditions around this would have breached the duty in section 48A(1), then the nominated undertaker must compensate the affected party, under paragraph 3(2). Paragraph 3(3) states how such compensation should be determined.

384 Paragraph 3(4) disapplies the prohibition under section 48A(5) of the Water Resources Act 1991 on making claims in respect of loss or damage. This allows for claims for compensation to be

made under this paragraph of this Act and those others listed.

Structures in, over or under a main river

385 Paragraph 4 disappplies the requirement for an environmental permit for operating a regulated facility in relation to carrying on of a relevant flood risk activity regarding construction works, if done for the purposes of this Act.

Floods

386 Paragraph 5 removes the restrictions on removing designated features under the Flood and Water Management Act 2010, in relation to works authorised under this Act.

Drainage

387 Paragraph 6 disappplies the requirements to provide approval for the drainage systems of construction works if those works are exercised under the powers of this Act.

Communication with public sewers in London

388 Paragraph 7 removes the specified requirements for communicating with sewers if the communication in question is to involve a sewer serving Phase One of High Speed 2. This provision confers an absolute discretion on sewerage undertakers to refuse to accept communication with certain sewers in Greater London.

Eels

389 Paragraph 8 disappplies Part 4 of the Eels (England and Wales) Regulations 2009, which relate to protection for the passage of eels in the process of construction works.

Schedule 22: Buildings

390 Schedule 22 disappplies and modifies provisions in the Building Act 1984 (“the 1984 Act”) and building regulations where they would impede the exercise of powers sought for Phase One purposes or which require adjustment in consequence of land acquisition powers being vested in the Secretary of State and the power to carry out works being vested in the nominated undertaker.

Building regulations

391 Paragraph 1 disappplies Part 1 of the 1984 Act with respect to building regulations, as well as building regulations under section 1 of that Act, in relation to certain buildings held by the Secretary of State or the nominated undertaker for Phase One purposes. The 1984 Act provides an exemption from Part 1 and building regulations for buildings belonging to a statutory undertaker. As land acquisition powers under the Act are vested in the Secretary of State, the disapplication is required to secure that a similar exemption applies in relation to Phase One of High Speed 2. The disapplication is wider than that provided for statutory undertakers under the 1984 Act in that it extends not only to offices or showrooms forming part of a railway station but also those which form part of a railway facility (defined as including a maintenance depot, electrical supply facility or stabling facility). To secure compliance with EU Directive 2010/31/EU on the energy performance of buildings, paragraph 1(5) excludes from the disapplication certain requirements of the building regulations which relate to energy efficiency.

Drain repairs

392 Paragraph 2 exempts works to drains carried out for Phase One purposes from certain requirements under section 61 of the 1984 Act relating to the carrying out of works to underground drains which communicate with sewers or cesspits. Section 61(4) of the 1984 Act provides an exemption from those requirements for drains and sewers constructed by or

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belonging to a railway company which run under, across or along the railway. As this exemption would not apply to works carried out to drains to enable Phase One of High Speed 2 to be constructed, the exemption in paragraph 2 is needed.

Drain disconnections

393 Paragraph 3 modifies section 62 of the 1984 Act which enables the local authority to impose requirements as regards the reconstruction or disconnection of drains. Paragraph 3 removes the power of a local authority to impose requirements as regards works to drains which are carried out for Phase One purposes and substitutes a requirement to give at least 48 hours' notice to the local authority before carrying out the works. This is to enable local authorities to update their records as to the position of sewers and drains in their area.

Raising of chimneys

394 Paragraph 4 modifies section 73 of the 1984 Act which makes provision for the protection of an owner ("the adjoining owner") where a person ("the building owner") erects or raises a building to a greater height than the chimney of an adjoining building. In such a case the local authority can require the building owner to increase the height of the chimney of the adjoining building. However, if the adjoining owner so requires, the works must be carried out by the adjoining owner at the expense of the building owner. Paragraph 4 provides that where the taller building is held by the Secretary of State or the nominated undertaker for Phase One purposes, the adjoining owner cannot insist on carrying out the works if that would require entry onto relevant Phase One land (as defined by paragraph 4(3)). So, unless the Secretary of State or nominated undertaker consents to the adjoining owner entering the relevant Phase One land, the works must be carried out by the nominated undertaker.

Construction of cellars and rooms below subsoil water level

395 Under section 74(1) of the 1984 Act, local authority consent is required for the construction of a cellar or room below subsoil water level in, or as part of, a house, shop, inn, hotel or office. Under section 74(2), this does not apply to the construction of a cellar or room in connection with a shop, inn, hotel or office that forms part of a railway station. Paragraph 5 extends the exemption in section 74(2) so that section 74(1) does not apply to the construction of a cellar or room in connection with a shop, inn, hotel or office which forms part of a railway station or other railway facility (defined to include a maintenance depot, electrical supply facility or stabling facility) which is used, or intended for use, for Phase One purposes.

Schedule 23: Party walls etc

396 Schedule 23 disapplies or modifies various provisions of the Party Wall etc Act 1996 ("the 1996 Act") as respects Phase One works.

397 Paragraph 2 removes the requirements under section 1 of the 1996 Act for the nominated undertaker to serve a notice on the adjoining landowner before constructing certain walls and fences.

398 Paragraph 3 ensures that an adjoining landowner does not acquire any rights over Phase One works under the 1996 Act.

399 Paragraph 4 removes the requirement under section 3 of the 1996 Act for the nominated undertaker, before carrying out works to certain walls or other structures at the boundary of adjoining land, to give notice to the adjoining landowner where the works are carried out in connection with the construction of Phase One works or the maintenance of such works within five years of Phase One being brought into general use. In consequence, the adjoining owner cannot serve a counter-notice under section 4 of the 1996 Act as respects those works.

400 Paragraph 5 removes the requirement under section 6 of the 1996 Act to obtain the consent of the adjoining owner (or authorisation under the disputes resolution procedure under the 1996 Act) before carrying out any excavation or erection for Phase One purposes.

401 Paragraph 6 modifies section 6 of the 1996 Act where a landowner (“the building owner”) proposes to undertake any excavation or erection near a building or structure which is erected for Phase One purposes or is on land held by the Secretary of State or the nominated undertaker for Phase One purposes. The effect of the modification is that the Secretary of State or the nominated undertaker can elect that works for the protection of the building or structure (as agreed between the parties or determined by arbitration) should be carried out by the Secretary of State or the nominated undertaker at the expense of the building owner instead of by the building owner.

402 Paragraph 7 makes provision for the determination of disputes under the 1996 Act which relate to a work required for Phase One purposes, or to a building or structure on land held by the Secretary of State or the nominated undertaker for Phase One purposes, in place of the procedure provided by section 10 of the 1996 Act. The disputes are to be determined by a single arbitrator appointed, in default of agreement, by the President of the Institution of Civil Engineers.

Schedule 24: Street works

403 Schedule 24 disapplies as respects works for Phase One purposes a number of provisions of highways legislation which relate to works affecting highways and streets. The disapplications do not apply to highways and streets for which the Secretary of State or a strategic highways company is the highway or the street authority unless the Secretary of State or the strategic highways company consents.

Works in or near highways

404 Paragraph 1 modifies of the application of provisions of the Greater London Council (General Powers) Act 1970, the Highways Act 1980 and the Greater London Council (General Powers) Act 1986 which would require a licence or approval to be obtained from the relevant highway authority before certain works (such as the erection of scaffolding, the planting of trees or shrubs in or near a highway or the placing of a retaining wall near a highway) can be carried out.

Street works

405 Paragraph 2 contains disapplications in relation to street works authorised by this Act. In the case of each of the disapplications listed, the Government considers that placing restrictions on works could risk the delivery timetable for Phase One of High Speed 2.

406 Paragraph 2(1) disapplies sections 56(1) and 56(1A) of the New Roads and Street Works Act 1991 (“the 1991 Act”). These provide for the power to direct when works that could affect traffic take place and to give directions as regards things done in exercise of any powers conferred by the Act with respect to works respectively.

407 Paragraph 2(2) disapplies section 56A of the 1991 Act which allows an authority to direct an undertaker doing street works to place apparatus in one street rather than another.

408 Paragraph 2(3) disapplies section 58(1) of the 1991 Act with respect to works authorised by the Act which would allow the street authority to restrict further work on a highway on which they have done substantial works for a period of 12 months after completion.

409 Paragraph 2(4) disapplies section 61(1) of the 1991 Act which provides that apparatus cannot be put on protected streets without the consent of the street authority.

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- 410 Paragraphs 2(5) and (6) disapply section 62(2) and (4) of the 1991 Act. These refer to street authorities' ability to ask for apparatus placed in a street to be moved if it is later designated a protected street and direct the nominated undertaker in relation to works ongoing if a street is designated or removed as protected, respectively.
- 411 Paragraph 2(7) disapplies section 63(1) of the 1991 Act which states that a street with special engineering difficulties cannot be worked on until plans and sections of works are agreed between the nominated undertaker and street authority.
- 412 Paragraphs 2(8) and (10) disapply sections 73A(1) and 78A(1)(b) of that Act. These relate to the requirement to re-surface streets after carrying out street works. They have been disapplied as these works are addressed by provision in Part I of Schedule 31 to the Act.
- 413 Paragraph 2(9) disapplies section 74A of the 1991 Act and regulations made under it which allow a highway authority to make changes for occupying highways to carry out street works.
- 414 Paragraphs 2(11) to (15) disapply the restrictions which apply under Schedule 3A to the 1991 Act where a street authority receives notice that substantial street works are proposed in a highway. These paragraphs remove the right of the street authority to require notification of other street works in such a highway and to give directions as to when street works may commence and also remove restrictions on the construction of further street works during or after the completion of street works.
- 415 Under paragraph 2(16) these provisions only apply to a street for which the Secretary of State is the street authority if the Secretary of State consents, which may be given subject to conditions.

Permit schemes

- 416 Paragraph 3 includes provisions that make clear that nothing in Part 3 of the Traffic Management Act 2004 with respect to permit schemes, and nothing in any permit scheme or in any regulation made under that Part, applies to works authorised by the Act. This is because these provisions would require a further consent for works which have already been authorised by the Act and are necessary for the implementation of Phase One of High Speed 2. This disapplication does not apply to streets for which the Secretary of State or a strategic highways company is the highway authority unless the Secretary of State or the strategic highways company consents.

Schedule 25: Traffic regulation

- 417 Schedule 25 makes provision relation to traffic regulation orders made under the Road Traffic Regulation Act 1984 ("the 1984 Act").

Traffic authority to consult Secretary of State before making traffic regulation order

- 418 Paragraph 1(1) and (2) requires the traffic authority to consult the Secretary of State where the traffic authority is proposing to make a traffic regulation order to a road where it appears to the authority that the order could significantly interfere with the use of the road by heavy goods vehicles for the purposes of the construction of Phase One of High Speed 2.
- 419 Paragraph 2(1) allows the Secretary of State by way of notice to designate a road or part of a road to which paragraph 1(2) does not apply.
- 420 By virtue of paragraph 3(1), the requirement for the traffic authorities to consult the Secretary of State under paragraph 1(2) ceases to apply to a traffic authority if the Secretary of State gives the authority notice that no further works are proposed in the authority's area or the use of the relevant roads are no longer required.
- 421 By virtue of paragraph 3(2) the requirement for the traffic authorities to consult the Secretary of

State under paragraph 1(2) ceases to apply in relation to a particular part of the area of the traffic authority ("the relevant part") if the Secretary of State considers that the relevant part can be treated separately and the Secretary of State gives the authority a notice stating that no further works are proposed to be constructed in the relevant part and the use of the roads in the relevant part is no longer required by heavy commercial vehicles for the purposes of the construction of Phase One of High Speed 2.

Power of Secretary of State to direct traffic authority to make traffic regulation order

422 Paragraph 4(1) allows the Secretary of State to give a direction to the traffic authority requiring the authority to make a traffic regulation order if the Secretary of State considers the making of the order is necessary for the timely, efficient and cost-effective construction of Phase One of High Speed 2 and it is reasonable in the circumstances. Paragraph 4(3) provides that where the authority makes the order under the direction, the authority may not make a further order varying or revoking the first order without the consent of the Secretary of State.

423 Paragraph 5(1) applies where the direction under paragraph 4 requires a traffic authority to make an order under section 1, 6 or 9 of the 1984 Act. Paragraph 6(1) applies where the direction under paragraph 4 requires a traffic authority to make an order under section 14 of the 1984 Act.

Further powers of Secretary of State (including in relation to variation or revocation of orders)

424 Paragraph 7(1) allows the Secretary of State to direct a traffic authority to revoke a traffic regulation order made by the authority pursuant to a direction under paragraph 4. Paragraph 7(2) allows the Secretary of State to direct a traffic authority to vary a traffic regulation order made by the authority pursuant to a direction under paragraph 4 where the Secretary of State considers that the variation is necessary for the timely, effective and cost-effective construction of Phase One of High Speed 2 and it is reasonable in the circumstances; or the effect of the variation is to remove or relax a restriction imposed by the order on the use of any road.

425 By virtue of paragraph 8(1) and (2), where the traffic authority fails to comply with a direction under paragraphs 4 or 7, the Secretary of State may make the order or may by order vary or revoke the traffic regulation.

426 Paragraph 9(1) allows the Secretary of State to vary or revoke a traffic regulation order if it is considered necessary for the timely, efficient and cost-effective construction of Phase One of High Speed 2 and it is reasonable in the circumstances.

Power to restrict traffic authority from making or implementing traffic regulation order

427 Paragraph 11 allows the Secretary of State to give a direction to a traffic authority prohibiting the authority from making or bringing into operation a traffic regulation order.

Consultation requirements applicable to Secretary of State

428 Paragraph 12 requires the Secretary of State to consult a traffic authority before giving a direction under paragraph 4, 7 or 11; or before making an order under paragraph 8(2) or 9 in relation to a traffic regulation order made by the authority.

Guidance

429 Paragraph 13 requires the Secretary of State, after consulting the nominated undertaker and affected traffic authorities, to prepare a statement setting out in general terms guidance in connection with the traffic authorities' duty to consult under paragraph 1(2) and how the

Secretary of State proposes to exercise the powers in relation to traffic regulation orders in Schedule 25.

Removal of vehicles

430 Paragraph 14 enables a person authorised by the nominated undertaker to remove, or arrange for the removal of, any vehicle which is stationary on a road in contravention of a traffic regulation order or on a road which is stopped up under the powers of the Act. The power can only be exercised if the vehicle, if not removed, is likely to obstruct the carrying out of any of the works authorised by the Act or is at risk of being damaged by the construction of the works. The vehicle can only be removed to another position on the same road or to a different road.

Schedule 26: Lorries

431 Schedule 26 modifies the application of lorry ban orders (as defined in the Schedule) in respect of works for Phase One of HS2. The provisions of the Schedule apply to the Greater London (Restrictions of Goods Vehicles) Traffic Order 1985 and also to any other order made at any time under section 1 or 6 of the Road Traffic Regulation Act 1984 which imposes restrictions on the use of roads by heavy commercial vehicles.

Lorry ban orders and required provision in lorry ban orders

432 Paragraphs 1 and 2 define the orders to which the Schedule applies and make provision to secure that the provisions of the Schedule will be apt for all such future orders.

Issue of emergency permits

433 Paragraphs 3 and 4 make provision for the grant of emergency permits under lorry ban orders in cases where a permit is required for a journey to be undertaken within eight working days of the application including provision to enable applications to be made at any time by telephone or by electronic means.

Grant of applications for permit

434 Given that the routing of heavy commercial vehicles is intended to be one of the areas of control that planning authorities will have under the planning regime established under the Act, paragraph 5 restricts the right to refuse or condition a permit under a lorry ban order. An applicant aggrieved by a decision of the authority not to grant a permit or to grant it subject to conditions may within 28 days appeal to the Secretary of State who may dismiss or vary the authority's decision.

Schedule 27: Noise

Control of noise on construction sites

435 Paragraph 1(1) modifies the operation of sections 60 and 61 of the Control of Pollution Act 1974, so that appeals under those provisions are determined by the Secretary of State or, if the parties agree, by arbitration, rather than by a magistrates' court.

436 Paragraph 1(2) enables the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs, acting jointly, to make regulations about procedure in relation to such arbitrations. Under paragraph 1(3), the regulations are to be made by statutory instrument subject to annulment procedure.

Defences to proceedings relating to statutory nuisance

437 Paragraph 2 provides a defence to proceedings for failure to comply with an abatement notice under section 80 of the Environmental Protection Act 1990, where the matter which is the

subject of the abatement notice concerns noise caused by the construction, maintenance or operation of Phase One and cannot reasonably be avoided.

438 Paragraphs 3 and 4 provide that an order under section 82(2) of the Environmental Protection Act 1990 may not be made by a magistrates' court in connection with noise emitted from premises, or from a vehicle, machinery and equipment in a street, where the nominated undertaker can show that the premises, or the vehicle, machinery or equipment, are or is being used for Phase One and the works concerned are being carried out in accordance with a notice or consent issued by the local authority under section 60, 61 or 65 of the Control of Pollution Act 1974 or the noise cannot reasonably be avoided. These provisions of the 1974 Act address control of noise on construction sites (section 60), consent for work on construction sites (section 61) and consent to exceed noise limits (section 65).

Schedule 28: Local Acts

439 Schedule 28 disapplies and modifies a number of provisions in local Acts where these would impede the exercise of the powers sought for Phase One of High Speed 2 or which require adjustment in consequence of land acquisition powers being vested in the Secretary of State and the power to carry out works being vested in the nominated undertaker.

London Squares Preservation Act 1931

440 Paragraph 1 disapplies section 3 of the London Squares Preservation Act 1931, which restricts the use of, and the carrying out of works in, specified London squares to recreational purposes, as respects anything done for Phase One of High Speed 2. Paragraph 1(2) similarly disapplies the provisions of any agreement made under section 9 of the 1931 Act between the relevant London borough council and the owner of a square protected under the 1931 Act which might otherwise restrict the construction of Phase One of High Speed 2. The disapplications are required because works are to be carried out on, and use is to be made of, parts of Euston Square, Amptill Square, Harrington Square and Camden Gardens.

London Overground Wires &c. Act 1939

441 Paragraph 2 disapplies the London Overground Wires etc Act 1933 and any byelaws made under it in respect of any wires erected or maintained as part of the Phase One works. The 1933 Act requires the prior consent of the relevant London borough council to the erection, placing or retention over or upon any street in the area of the borough of any wire and the Act gives London borough councils various powers to regulate the use of wires including the making of byelaws. There are a number of limited exceptions under section 17 of the 1933 Act for railway companies but as these are dependent upon the railway company owning or holding land for railway purposes, they would not apply as regards Phase One of High Speed 2 where the land acquisition powers are to be vested in the Secretary of State. A disapplication is therefore necessary.

London Building Acts (Amendment) Act 1939

442 Paragraph 3 disapplies Parts 3, 4 and 5 of the London Building Acts (Amendment) Act 1939 with respect to anything held and used in connection with Phase One of High Speed 2 by the Secretary of State or the nominated undertaker. The 1939 Act contains an exemption for certain buildings or structures belonging to a railway company and situated on a railway or within a railway or station premises. As land acquisition powers under the Act are to be vested in the Secretary of State, a disapplication is required so that a similar exemption will apply to Phase One of High Speed 2. As in the case of Part 1 of the Building Act 1984 the exemption has been extended to cover offices or showrooms which form part of a railway facility (defined to include a maintenance depot, electrical supply facility or stabling facility) as well as those which form part of a railway station.

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West Midlands County Council Act 1980

- 443 Paragraph 4 disapplies certain provisions of the West Midlands County Council Act 1980 (“the 1980 Act”) in relation to Phase One of High Speed 2 which apply to various local authority areas in the West Midlands.
- 444 Paragraph 4(1) disapplies section 11 of the 1980 Act which enables a relevant highway authority to regulate the use of exterior floodlighting provided on buildings which may constitute a danger to the traffic on a street. In the case of Phase One of High Speed 2 it is intended that restrictions on the use of site lighting are to be included in the Code of Construction Practice (“CoCP”) and the Environmental Minimum Requirements (“EMRs”).
- 445 Paragraph 4(2) disapplies section 15 of the 1980 Act which enables a relevant local authority to require persons carrying out building operations to take steps to minimise dust emissions. It is intended that dust emissions caused by works for Phase One of HS2 will be dealt with under the CoCP and the EMRs.
- 446 Paragraph 4(3) disapplies section 16 of the 1980 Act which prohibits the use of air-powered tools or mobile air compressors in relation to certain works without an effective device for minimising noise. It is intended that noise from tools will be dealt with under the CoCP and the EMRs.
- 447 Paragraph 4(4) disapplies section 21 of the 1980 Act which enables a relevant local authority to enforce their right of entry to carry out inspections under the Prevention of Damage by Pests Act 1949 by obtaining a warrant from a justice of the peace authorising entry on to the land by force if necessary.
- 448 Paragraph 4(5) disapplies section 46 of the 1980 Act which requires a relevant local authority to reject plans deposited under building regulations unless the authority is satisfied that there will be adequate access for the fire brigade. Fire safety aspects relating to Phase One of High Speed 2 are to be dealt with in accordance with the applicable rail industry standards.
- 449 Paragraph 4(6) disapplies Part 7 of the 1980 Act which enables a relevant local authority to impose and enforce requirements to regulate the storage on sites of stacks of certain flammable materials. There are exemptions for stacks stored in connection with the maintenance of Network Rail’s railway which would not apply in relation to Phase One of High Speed 2. In the case of Phase One of High Speed 2 it is intended that fire prevention on work sites will be dealt with under the CoCP and the EMRs.
- 450 Paragraph 4(7) disapplies section 84 of the 1980 Act which enables a relevant local authority to require works which are erected in, under or over watercourses to be securely maintained. There is an exception for works belonging to Network Rail and used for the purposes of Network Rail’s undertaking. The disapplication under paragraph 4(7) is needed to give a similar exemption for Phase One of High Speed 2.

Staffordshire Act 1983

- 451 Paragraph 5 disapplies certain provisions of the Staffordshire Act 1983 (“the 1983 Act”), in relation to Phase One of High Speed 2, which would otherwise apply in certain areas in Staffordshire.
- 452 Paragraph 5(1) disapplies section 7 of the 1983 Act which requires the approval of a relevant local authority to the proposed layout and construction of new streets. There is an exemption for new streets constructed by Network Rail pursuant to the statutory functions. Paragraph 5(1) provides a similar exemption for Phase One of High Speed 2.
- 453 Paragraph 5(2) of the 1983 Act disapplies section 10(1)(b) of the 1983 Act which enables a

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relevant local authority to prohibit specified activities including driving or riding a vehicle over certain land. There is a limited exception for vehicles which are used in the course of building operations or by Network Rail and certain other undertakers. These exemptions would not cover the use of vehicles for the maintenance of Phase One of High Speed 2 and the disapplication is therefore needed.

454 Paragraphs 5(3) to (6) disapply sections 12, 16, 26 and Part 7 of the 1983 Act which are in similar terms, respectively, to sections 15, 21, 46 and Part 7 of the 1980 Act described above.

Oxfordshire Act 1985

455 Paragraph 6 disapplies certain provisions of the Oxfordshire Act 1985 (“the 1985 Act”) in relation to Phase One of High Speed 2 which apply to certain areas in Oxfordshire.

456 Paragraph 6(1) disapplies section 5(2)(a) of the 1985 Act which is in similar terms to section 10(1)(b) of the 1983 Act described above. Paragraph 6(2) disapplies section 10 of the 1985 Act which enables the highway authority to impose and enforce conditions relating to the culverting of roadside ditches. As respects Phase One of High Speed 2 it is intended that the functions of the highway authorities relating to such matters will be regulated under Part 1 of Schedule 31.

Greater London Council (General Powers) Act 1986

457 Paragraph 7 disapplies provisions of the Greater London Council (General Powers) Act 1986 which require the consent of the relevant London borough to the demolition of a building or other structure under a street and to other associated works.

Schedule 29: Application of other railway legislation etc

458 Schedule 29 contains a number of provisions which relate to how other legislation pertaining to railways applies to Phase One.

Highway (Railway Crossings) Act 1839

459 Paragraph 1 disapplies the Highway (Railway Crossings) Act 1839, concerning the gating of carriageways crossed on the level. This is because it is not proposed that level crossings for carriageways will be provided under the Act.

Railway Regulation Act 1840

460 Paragraph 2 modifies section 16 of the Railway Regulation Act 1840 as it relates to Phase One or trains that travel wholly or partly on Phase One, by increasing the maximum penalty for offences relating to obstruction and trespass to a fine on summary conviction at level 3 on the standard scale or imprisonment for 51 weeks (in England and Wales) or 12 months (in Scotland). By virtue of paragraph 2(2) however, the maximum term of imprisonment in England and Wales is one month before section 281(5) of the Criminal Justice Act 2003 is brought into force.

Railway Regulation Act 1842

461 Paragraph 3 disapplies section 9 of the Railway Regulation Act 1842, concerning the gating of carriageways crossed on the level, for the same reason that paragraph 1 disapplies the Highway (Railway Crossings) Act 1839.

Railway Clauses Consolidation Act 1845

462 Paragraph 4 incorporates the specified sections of the Railways Clauses Consolidation Act 1845 into this Act.

Railway Clauses Act 1863

463 Paragraph 5 incorporates sections 4 and 12 of the Railway Clauses Act 1863 into this Act.

Regulation of Railways Act 1889

464 Paragraph 6 modifies section 5 of the Regulation of Railways Act 1889 as it relates to Phase One or trains that travel wholly or partly on Phase One, by increasing the maximum fine on summary conviction for offences under section 5(1) (relating to ticketing and fares) to level 2 on the standard scale and under section 5(3) (relating to travel with intent to avoid payment of fare) to level 3 on the standard scale, and also extends the power of arrest under section 5(2).

British Transport Commission Act 1949

465 Paragraph 7 applies sections 55 and 56 of the British Transport Commission Act 1949 (provisions dealing with trespass on railways and stone throwing) to relevant railway works constructed under the Act.

North Pole Depot

466 Paragraph 8 relates to clause 12 of the 1987 North Pole Depot undertaking. It amends this so that the specified clause does not apply on the western part of the site, or railway sidings or stabling in connection with the western depot.

Schedule 30: Arbitration between railway operators

Directions as to results to be achieved

467 Schedule 30 relates to the process should a difference between operators under section 43(3) be referred to arbitration. Paragraph 1(2) provides that, should the parties go to arbitration to reach agreement, the Secretary of State must be informed immediately.

468 Paragraph 1(3) allows the Secretary of State to require the arbitrator to ensure that any agreement reached delivers a particular result or outcome. This does not allow the Secretary of State to set the terms of any agreement, but protects against the arbitration process delivering an outcome that hampers the delivery or operation of Phase One of High Speed 2.

469 Paragraph 1(5) provides that the Secretary of State may be asked by either party, or the arbitrator, to provide a direction, but does not have to be asked to do so. Paragraph 1(4) states that a direction may be provided even if the Secretary of State is directly or indirectly a party to the arbitration.

470 Paragraph 1(6) considers the circumstances in which the arbitrator must comply with the direction made. The arbitrator must do so if the direction is both relevant to the determination of the terms of the agreement and is given before the arbitrator has reached a decision.

471 Paragraph 1(7) sets out what the arbitrator must do in complying with a direction. Broadly, the arbitrator must try to ensure that the agreement reached through arbitration achieves the outcome set out by the direction from the Secretary of State, as far as is reasonably possible.

Directions as to consolidation and grouping of proceedings

472 Paragraph 2 sets out the ways in which the proceedings for arbitration are to be conducted. Paragraph 2(1) provides that the Secretary of State will have the power to request, or to direct, that a group of proceedings, for example on a similar matter, should be included in the same

arbitration process, or should be arbitrated at the same time.

473 Paragraph 2(3) provides that the arbitrator may make a request for such direction, while paragraph 2(4) sets out that such a direction must establish the terms for consolidating or timing hearings.

474 Paragraph 2(5) contains provisions for cases where hearings with different arbitrators are consolidated. These allow the direction for such hearings to both specify the person who will be the arbitrator and how that person shall be determined.

Schedule 31: Transfer schemes: further provisions

475 Schedule 31 concerns transfer schemes related to Phase One of High Speed 2. It contains provisions which allow the Secretary of State to make transfers of property, rights and liabilities between parties. It is currently unclear as to who will own the HS2 line in the long term. As a result, it is necessary to provide the Secretary of State with powers to transfer the necessary items to any subsequent owner. In addition, these provisions ensure that the transferee is treated identically in law as the original holder of these items.

Property, rights and liabilities

476 Paragraph 1 refers to what may be transferred and makes specific provision for rights and liabilities related to contracts of employment to be transferred. Paragraph 1(2) also makes clear that a transfer scheme may create rights or interests, or impose liabilities, in relation to property transferred.

477 Paragraph 2 provides that the power to make a scheme for the transfer of property may be exercised so as to create an interest in or right in relation to the property.

Transfer of employees and continuity of employment

478 Paragraphs 3 to 6 relate to the transfer of employees and the continuity of their employment. The provisions make explicit that the transfer counts as neither dismissal in any way, nor a break in the period of that person's employment. This is so that they will not be entitled to payment under Part 11 of the Employment Rights Act 1996 for redundancy. The employee does, however, retain their right to terminate their contract if there is a substantial change for the worse in their working conditions. Paragraph 6 also ensures these provisions apply to employees of the Civil Service.

Provision for contraventions etc to be treated as not occurring

479 Paragraph 7 provides that any transfer which takes place will do so as if it did not contravene any rights or interests which it otherwise may do.

480 Paragraph 8 makes similar provisions as for paragraph 7, but in relation to the transfer of shares in a subsidiary company of the transferor.

Power to modify interests, rights and liabilities of third parties

481 Paragraph 9 provides that a transfer scheme may modify interests, rights or liabilities of third parties in relation to matters to which the scheme relates.

482 Paragraph 10 contains provisions for what is to be done for those who have a qualifying interest, defined in paragraph 10(2), in parts of the scheme. It provides that these are only enforceable in so far as is provided for by the transfer scheme itself.

Obligations to enter into agreements or execute instruments

483 Paragraph 11 contains provisions indicating the ability for obligations to be imposed, either on the transferor or transferee, to either enter into agreement or execute instruments in favour of

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persons in the scheme.

Supplementary provisions of schemes

484 Paragraph 12 details the type of provisions that transfer schemes may contain.

Effect of scheme

485 Paragraph 13 includes the provisions for when things will transfer, but also makes clear that individual arrangements may be made regarding the timing of transfer of individual things.

Modification of scheme by agreement

486 Paragraph 14 makes provision that transfer schemes may be modified, subject to what is permitted under this Schedule, by mutual agreement between the transferor and transferee(s).

Provision of information to person making scheme

487 Paragraph 15 sets out the requirements for the Secretary of State in making a transfer scheme. It also contains provisions for what action must be taken when the necessary information is not submitted.

Agreements relating to schemes

488 Paragraph 16 provides that the Secretary of State may by agreement fetter the exercise of his or her discretion relating to his or her powers under this Schedule.

Power to make provision about tax consequences of schemes

489 Paragraph 17 enables the Treasury to make regulations, subject to negative procedure in the House of Commons, varying the way in which a relevant tax has effect in relation to any property, rights or liabilities transferred in accordance with a transfer scheme or anything done for the purposes of, in relation to, or in consequence of, a transfer.

Schedule 32: Extension of planning permission for statutory undertakers

Case where planning permission extended

490 Schedule 32 allows certain statutory undertakers (such as sewerage and electricity undertakers) to rely on their own permitted development rights, say for the diversion of their apparatus to accommodate Phase One, where the likely significant effects of their works are covered by Phase One environmental assessment. In order to achieve this where the necessary conditions are met, paragraph 1 disapplies the provisions of article 3(10) of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Condition of extended planning permission

491 Paragraph 2 contains provisions enabling the Secretary of State to impose requirements in relation to extended planning permission provided by this Schedule. This can be either to ensure compliance with an undertaking given to the Select Committee of either the House of Commons or the House of Lords, or to ensure the environmental impacts of the development do not materially differ from those set out in the environmental statement.

Controls on proposed development

492 Paragraphs 3 and 4 contain provisions enabling the Secretary of State to intervene with respect to such statutory undertaker works, by imposing conditions on the extended planning permission provided by this Schedule, or to disapply the extended permission. This can be either to ensure compliance with an undertaking given to the Select Committees of either the House of Lords or House of Commons, or (in the case of the imposition of conditions) to ensure

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the environmental impacts of the development do not materially differ from those set out in the environmental statement.

Notices

493 Paragraph 5 contains provisions about the notices given under paragraphs 2 to 4.

Mayoral development corporations: regulations

494 Paragraph 6 allows the Secretary of State to make regulations modifying the operation of the Schedule in relation to Mayoral Development Corporations.

Schedule 33: Protective provisions

495 Schedule 33 contains provisions setting out the protections to be provided for various bodies with statutory responsibilities likely to be affected by the works.

Part 1: Highways and traffic

496 Paragraph 1 provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker and the highway authority concerned agree to vary them. The bodies for which this protection applies include all the highway authorities for highways in which the powers of the Act can be exercised (i.e. both the local highway authorities (local authorities and Transport for London) and, in respect of trunk roads, the Secretary of State). The arrangements set out here are in addition to the protection given to such authorities in Schedules 2 and 4 (for example, the right to approve temporary closures, the creation of new accesses, and the construction of new or altered streets).

497 These arrangements will apply instead of arrangements which normally govern street works under Part 3 of the New Roads and Street Works Act 1991 (except that by virtue of paragraph 14(2) the regulations which govern reinstatement of streets under that Act will apply to reinstatement of highways under the powers of this Act).

498 Paragraph 3 imposes a general obligation to minimise disruption to traffic. This will apply to the nominated undertaker in relation to powers to stop up streets and to construct works.

499 Paragraphs 4, 5 and 7 address works constructed under highways. Approval of plans by the highway authorities is required for the construction of tunnels, subways or other structures within eight metres of the surface (excluding street works within the meaning of Part 3 of the New Roads and Street Works Act 1991). Consent is required if the completed structure will interfere with drainage or will be within two metres of the surface. By virtue of paragraph 2 any consent or approval under these or any other provisions of this Part is not to be unreasonably withheld. In addition such works must be designed, constructed and maintained to carry the appropriate loading recommended for highway bridges.

500 Paragraph 6 applies to works involving bridges. Approval of plans is required if there is any interference with a highway and controls are imposed over the way that the works are constructed.

501 Paragraph 8 gives the highway authorities a right of access to inspect the construction of the works and paragraphs 9 to 15 contain miscellaneous provisions governing the way that works are constructed in highways, together with provision for reinstating streets after completion of the work, making good damage caused to highways and street furniture, and providing for reimbursement of costs incurred by highway authorities in connection with road diversions required for the works.

502 Paragraph 16 provides that the nominated undertaker will not be exempt from liability, under this Part of this Schedule or otherwise, by the fact that an act or thing was done in accordance

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with plans approved by the highway authority.

503 Paragraph 17 addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of section 64). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the Secretary of State who must have regard to any matters specified by the Secretary of State on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for the Secretary of State to be involved in the resolution of such disputes.

Part 2: Electricity, gas, water and sewerage undertakers

504 Paragraph 18 provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker (or the Secretary of State, in relation to those provisions concerning the Secretary of State's powers under the Act to acquire land) and the undertakers concerned agree to vary them. The undertakers which enjoy the benefit of these provisions are bodies holding licences under the Electricity Act 1989, licensed gas transporters under the Gas Act 1989, and licensed water and sewerage undertakers under the Water Industry Act 1991. Local authorities exercising sewerage functions under arrangements with the local sewerage undertaker under section 97 of the Water Industry Act are also protected.

505 The protection extends to the bodies in relation to apparatus belonging to or maintained by them for the purpose of their undertaking and, in the case of water and sewerage undertakers, apparatus which is subject to an agreement or notice to adopt under the Water Industry Act 1991. However the arrangements will not generally apply to apparatus governed by Part 3 of the New Roads and Street Works Act 1991 (which establishes a nation-wide regime governing street works). Accordingly that Act and the regulations and codes of practice made under it (in particular the Street Works (Sharing of Costs of Works) (England) Regulations 2000 and the Code of Practice "Measures necessary where apparatus is affected by major works (diversionary works)") will apply to the undertakers' apparatus in streets.

506 Paragraph 19 sets out the general principle that apparatus is not to be removed under the powers of the Act until replacement apparatus has been provided and is in operation. This principle applies except in exceptional circumstances where a certificate is issued by the appropriate Ministers allowing this requirement to be dispensed with. The appropriate Ministers are the Secretary of State for Transport acting jointly with either the Secretary of State for Environment, Food and Rural Affairs or the Secretary of State for Energy and Climate Change.

507 Paragraphs 20 to 24 set out a procedure for dealing with diversion of apparatus (which can be required by either the nominated undertaker or the undertaker concerned) in consequence of the Phase One of High Speed 2 works. This requires the nominated undertaker or the Secretary of State to provide rights and facilities for the replacement apparatus when it is able to do so, but otherwise the undertaker is required to use its best endeavours to obtain these. The terms relating to any such replacement apparatus are to be agreed or otherwise determined in accordance with the disputes procedure under paragraph 31, and any person making a determination under paragraph 31 must have regard to any template provisions issued by the appropriate Ministers (following consultation with the undertakers).

508 Paragraph 25 applies to apparatus which is not proposed to be removed: the nominated undertaker is to provide plans of the proposed works near to the apparatus and the undertaker can require protective measures to be undertaken, or require its removal (in which case the procedures under paragraphs 20 to 24 are to apply).

509 Paragraphs 26 and 27 are intended to protect continued access to apparatus. In particular they

provide that the undertaker is to continue to enjoy the same rights for the purpose of maintaining apparatus in streets which have been permanently stopped up under the powers of the Act.

- 510 Paragraph 28 provides for reimbursement of the undertakers' costs in connection with the diversion or protection of its apparatus (or arising from the cutting off of apparatus) and paragraph 29 provides an indemnity in respect of damage to apparatus or interruption to the undertakers' service, caused by the construction of the works. This indemnity includes provision for reasonable compensation for any losses suffered by the undertaker.
- 511 Paragraph 30 provides that, where Network Rail Infrastructure Limited is the nominated undertaker, this Part of the Schedule will have effect subject to any existing agreements Network Rail may have with undertakers.
- 512 Paragraph 31 addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of section 64). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by those Ministers on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for Ministers to be involved in the resolution of such disputes. The cost of the dispute is to be borne as directed by the appointed decision-maker.

Part 3: Electronic communications code networks

- 513 Paragraph 32 provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker and the operators concerned agree to vary them. The operators to whom these provisions apply are operators of an electric communications code network as defined in the Communications Act 2003.
- 514 The electronic communications code is the code set out in Schedule 2 to the Telecommunications Act 1984, and an electric communications code network is so much of an electric communications network or conduit system provided by an electronic communications code operator, (i.e. a person to whom the code is applied by a direction of the Secretary of State under the Communications Act) as is not excluded from the application of the code by such a direction.
- 515 The protection conferred by this Part applies to any works authorised by the Act ("the authorised works").
- 516 Paragraph 33 clarifies the relation between the operation of the electronic communications code, Part 3 of the New Roads and Street Works Act 1991 (which regulates street works) and section 272 of the Town and Country Planning Act 1990 (which addresses removal of apparatus in land which has been compulsorily acquired).
- 517 Paragraph 23 of the electronic communications code (which imposes a procedure for the alteration of telecommunications apparatus by statutory undertakers) is to apply for the purpose of the authorised works except where those purposes are regulated by or under the New Roads and Streets Works Act 1991 (i.e. where the apparatus is in a street), or where the nominated undertaker has a right to remove telecommunications apparatus by virtue of the default powers contained in section 272 of the Town and Country Planning Act 1990 or in relation to removal of apparatus in streets stopped up under the powers of the Act (which is addressed in sub-paragraphs (3) to (8) of paragraph 35 of this Part). Paragraph 21 of the electronic communications code (which restricts other persons' rights to require the removal of electronic communications apparatus) is excluded in the same circumstances.

- 518 Paragraph 34 provides that the powers of Schedule 4 or the temporary stopping up or diversion of highways are not to affect the statutory rights of operators to use that street for the purpose of installing or maintaining apparatus.
- 519 Paragraph 35 protects operators' rights of access to apparatus in streets which have been permanently stopped up under the powers of the Act, but this protection is subject to the nominated undertaker's rights to require the removal of that apparatus or to alter it.
- 520 The nominated undertaker is required to give notice of the proposed stopping up and the operator has a right and, where reasonably requested by the nominated undertaker, an obligation to move its apparatus. There is provision for the undertaker to recover its costs but sub-paragraph (8) provides that the provisions of this Part dealing with the recovery of costs for relocation works are not to apply where the relocation is required as a result of works which are major transport works or major highway works for the purpose of Part 3 of the New Roads and Street Works Act 1991. In such a case the cost sharing regime provided for under that Act will govern recovery of costs and consequently the amount recoverable will be discounted by such amount as is prescribed from time to time under the cost-sharing regulations made under section 85 of that Act (the amount is currently 18% or 7.5% depending on the nature of the works).
- 521 Paragraph 36 addresses the terms which are to apply to apparatus which has been relocated. These terms are to be agreed or otherwise determined in accordance with the disputes procedure under paragraph 39, and any person making a determination under paragraph 39 must have regard to any template provisions issued by the appropriate Ministers (following consultation with the undertakers). In this case and paragraph 39 the appropriate Ministers are the Secretary of State for Transport and the Secretary of State for Culture, Media and Sport acting jointly.
- 522 Paragraph 37 provides an indemnity for operators in respect of damage to apparatus or interruptions to the supply of its services caused by the construction of the authorised works (or by subsidence resulting from those works). This does not apply to apparatus governed by Part 3 of the New Roads and Street Works Act 1991 (i.e. works in streets).
- 523 Paragraph 38 provides that, where Network Rail Infrastructure Limited is the nominated undertaker, this Part of the Schedule will have effect subject to any existing agreements Network Rail may have with operators.
- 524 Paragraph 39 addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of section 64). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by the appropriate Ministers on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for Ministers to be involved in the resolution of such disputes. The cost of the dispute is to be borne as directed by the appointed decision-maker.

Part 4: Canal & River Trust

- 525 Paragraph 40 provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker (or the Secretary of State, in relation to those provisions concerning the Secretary of State's powers under the Act to acquire land) and Canal & River Trust ("the Trust") agree to vary them. The Trust is a charitable trust which was established in July 2012 to replace the British Waterways Board, a statutory corporation. It owns and manages a network of waterways, comprising canal and river navigations, reservoirs and docks. A number of its waterways may be affected by the powers of the Act. These

arrangements apply to “canals” which means any canal or waterway owned or managed by the Trust, including towpaths and other land held or used for the canal. The nominated undertaker’s works to which the provisions apply are any “specified works” defined as works in, across, under or within 15 metres of, or which may affect, any canal.

- 526 Paragraph 41 makes clear that in relation to land of the Trust, the compulsory powers of the Secretary of State to acquire land will be limited to “what is reasonably necessary for, or in connection with, the construction, maintenance or operation of the works” authorised by the Act, having regard to the statutory duties of the Trust.
- 527 Paragraph 42 provides for the Trust to approve plans of the specified works and in approving plans to be able to make reasonable requirements in relation to its canals. Such approval is not to be unreasonably withheld.
- 528 Paragraph 43 deals with the construction of the specified works (and any protective works). It provides in particular for these to be constructed to the Trust’s reasonable satisfaction and with minimum disruption to traffic on the canals and use of towpaths, for the Trust to have advance notice of commencement of construction and the right to inspect the construction work.
- 529 Paragraphs 44 and 45 deal with deposits of materials on, in or over canals and discharge of water into canals. These operations will require the Trust’s consent (which is not to be unreasonably withheld). The exercise of the powers of paragraph 8 of Schedule 2 to discharge water into water courses is made subject, in relation to canals, to the terms of any consent given under these provisions.
- 530 Paragraph 46 provides protection for access to or along towpaths. If this is temporarily obstructed and there is no alternative means of access, the nominated undertaker is required (so far as is reasonably practicable) to provide a substitute. These requirements are in addition to the obligation in paragraph 6(2) and (5) of Schedule 4 to ensure reasonable pedestrian access to premises adjoining a highway which has been temporarily stopped up and to obtain the consent of the highway authority for such closures.
- 531 Paragraph 47 contains provision empowering the Trust to give the nominated undertaker notice to act in circumstances where canal work is abandoned or is in such a condition that it does or may constitute a danger or interference with navigation. The Trust may carry out remedial works at the nominated undertaker’s expense in the event of default by the nominated undertaker.
- 532 Paragraph 48 contains a general indemnity for the Trust in respect of claims against it arising from damage to canals covered by the works and for the costs of making good such damage.
- 533 Paragraph 50 addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of section 64). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by the appropriate Ministers on making the appointment. The appropriate Ministers for this purpose are the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs acting jointly. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for the appropriate Ministers to be involved in the resolution of such disputes.

Part 5: Land drainage, flood defence, water resources and fisheries

- 534 These provisions contain protection for authorities (referred to as drainage authorities) which have functions in connection with land drainage, flood defence, fisheries and water resources. These bodies are the Environment Agency and the local drainage authorities (i.e. local authorities which are given drainage functions as lead local flood authorities as a result of the Flood and Water Management Act 2010 and internal drainage boards). Under these provisions protection is given to each drainage authority in relation to works affecting their functions. Where works authorised by the Act affect a main river, groundwater, water resources or fisheries, i.e. matters affecting the functions of the Environment Agency, the protection applies to the Environment Agency. Where works affect ordinary watercourses (i.e. watercourses which are not main rivers) or flood defence features for which a local drainage authority is responsible, the protection applies to the relevant local drainage authority.
- 535 Paragraph 51 provides that arrangements set out in this Part are to apply unless the nominated undertaker and the drainage authority concerned agree otherwise. It explains which type of drainage authority has responsibility in relation to the different types of works and also provides, given the strategic role of the Environment Agency, for local drainage authorities to consult the Agency in exercising their functions and for the Agency to be able to issue model conditions.
- 536 Paragraphs 52 and 53 provide for the drainage authority to approve plans of any specified works and in approving plans to be able to make reasonable requirements (including requiring the nominated undertaker to construct protective works at its own cost). Approval of plans under these provisions is not to be unreasonably withheld.
- 537 Paragraph 54 deals with the construction of the works (and any protective works). It provides in particular for these to be constructed to the drainage authority's reasonable satisfaction, for the drainage authority to have the right to inspect the construction and to require alteration or removal of the works where they have not been constructed in accordance with the requirements of this Part.
- 538 Paragraph 55 provides for the flood defence works constructed under the powers of the Act or which is on land held by the nominated undertaker to be maintained to the reasonable satisfaction of the drainage authority and paragraph 56 requires the nominated undertaker to make good any impairment to the efficiency of drainage works for flood defences purposes or any other damage.
- 539 Under both paragraphs 55 and 56 the drainage authority can take remedial action where the nominated undertaker fails to do so.
- 540 Paragraph 57 requires the nominated undertaker to take all reasonably practicable measures to prevent interruption of the free passage of fish in any fishery and contains provision for the nominated undertaker to prevent or make good damage to fisheries (a fishery is defined as any waters containing fish and the fish within or migrating to or from such waters and the spawn, spawning grounds or food of such fish). The Environment Agency can take remedial action if the nominated undertaker fails to do so.
- 541 Paragraphs 58 to 60 contain a general indemnity for the drainage authority in respect of claims against it arising from the construction of the specified works in respect of the drainage authority's functions protected by this Part.
- 542 Paragraph 61 addresses disputes arising under this Part and provides for these to be referred to arbitration (which would then be governed by the provisions of section 64).

Commencement

- 543 The provisions of this Act (except section 11 and Schedule 14) came into force on 23 February the date of Royal Assent (section 70(1)).
- 544 The High Speed Rail (London - West Midlands) Act 2017 (Commencement) Order 2017 (S.I. 2017/209) brought section 11 and Schedule 14 into force on 24 February 2017.

Financial implications of the Act

- 545 It is proposed that Phase One of High Speed 2 construction will be funded by central Government. The Spending Review settlement announced on 25 November 2015 provided provided £14.8bn of capital funding over the next five years to take HS2 forward.
- 546 The settlement announced set out an updated funding envelope for delivering the HS2 project in 2015 prices of £55.7bn. The funding envelope has been increased to reflect inflation over the past 4 years. The envelope was previously £50.1bn in 2011 prices (as set out in the 2013 Spending Review).

Parliamentary approval for financial costs or for charges imposed

- 547 A money resolution is required for this Act, to cover potential expenditure by the Secretary of State under various provisions of the Act. A number of provisions contemplate the payment of compensation where the Secretary of State's powers of compulsory acquisition are exercised. The Act also confers a range of functions on the nominated undertaker (including the power to construct and maintain the main works for construction of Phase One of HS2, and other miscellaneous obligations to pay compensation).
- 548 The Act also gives rise to additional functions for the Office of Rail and Road (previously the Office of Rail Regulation). The Office was established by section 15 of the Railways and Transport Safety Act 2003. Paragraph 15 of Schedule 1 to that Act provides for expenditure incurred by the Office in connection with the performance of its functions to be paid out of money provided by Parliament, to the extent that the Office's expenditure is not met by its other income. The exercise of the additional functions conferred on the Office by the Act may lead to an increase in the Office's expenditure and, as a result, an increase in the payments to the Office out of money provided by Parliament under the 2003 Act.

Compatibility with the European Convention on Human Rights

- 549 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement, before second reading, about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of the Act). The Secretary of State for Transport has made the following statement: "In my view the provisions of the High Speed Rail (London - West Midlands) Bill are compatible with the Convention Rights."
- 550 The High Speed Rail (London - West Midlands) Act 2017 provides powers for the Secretary of State to purchase property compulsorily, and for a nominated undertaker to construct and

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operate a new high speed railway, between London and the West Midlands (the first phase of an intended national high speed network called "HS2").

551 As a Hybrid Act, the Act necessarily involves interference with property rights and homes. The potential for such effects engages, in particular, Article 1 of Protocol 1 (the right to peaceful enjoyment of possessions), Article 8 (the right to respect for private and family life) and, to the extent that any places of assembly or places used for religious purposes are affected, Article 9 (the right to freedom of thought, conscience and religion). In particular the Act contains provisions for compulsory acquisition of land for building the new railway, and rights of entry to carry out surveys and works on people's land. Furthermore, the railway would, by causing noise, vibration, light pollution and visual intrusion, unavoidably reduce the enjoyment which owners of neighbouring land have over their property.

552 Mitigation of the impact of such interference is provided by the compensation provisions relating to compulsory acquisition and injurious affection to properties under existing legislation which are applied to Phase One of High Speed 2 by the Act and by additional compensation provisions in the Act and also by a range of policies that the Secretary of State will be adopting in relation to the scheme - including policies relating to hardship, land acquisition, business relocation and to mitigate construction impacts of the scheme. Taking into account the public and other benefits that will arise from Phase One of High Speed 2 development, and mitigation by the arrangements that have been provided, the Secretary of State is of the view that the Act strikes a fair balance between the private interests of owners of property on or near the route, and the wider public interest in generating additional capacity on, and improved connectivity through, the national rail network. Furthermore he considers that any remaining interference with property and other rights is proportionate and can be, and in all the circumstances is, justified.

553 The Act contains provisions that provide for the determination of disputes by arbitration. In the light of the applicability of standard procedures for arbitration and the availability of judicial review in relation to any decisions of the Secretary of State, the Secretary of State is of the view that the Act is compliant with the requirements of Article 6 (the right to a fair trial).

Annex A - Hansard References

554 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	25 November 2013	Vol. 571 Col. 46
HS2 Hybridity examination	17 December 2013	Transcript
HS2 Hybridity examination	8 January 2014	Transcript
Second Reading	28 April 2014	Vol. 579 Col. 557
Instruction to the Select Committee	29 April 2014	Vol. 579 Col. 771
Carry-over motion	29 April 2014	Vol. 579 Col 772-774
1st and 2nd reading	5 June 2014	Vol 582 Col 113
Carry-over motion and instruction to Select Committee	9 September 2014	Vol. 585 Col. 798-817
Select Committee hearings	8 July 2014 - 15 December 2015	Transcripts of hearings
Select Committee First Special Report Session 2014-15	23 March 2015	Report
Promoter's response	June 2015	Response
1st and 2nd reading	28 May 2015	Vol. 596 Col. 201
Instruction to the Select Committee	23 June 2015	Vol. 597 Col. 811-817
Instruction to the Select Committee	15 September 2015	Vol. 597 Col. 811-817
Instruction to the Select Committee	1 December 2015	Vol. 603 Col. 300
Select Committee Second Report Session 2015-16	22 February 2016	Report
Promoter's response	March 2016	Response
Public Bill Committee	1 March 2016 3 March 2016 8 March 2016	First sitting Second sitting Third sitting Fourth sitting Fifth sitting Sixth sitting
Report and Third Reading	23 March 2016	Vol. 607 Col. 1603-1680
Carry-over motion	23 March 2016	Vol 607 Col 1681-1682
<i>House of Lords</i>		
Introduction	23 March 2016	Vol. 769 Col. 2519
Second Reading	14 April 2016	Vol. 771 Col. 361-434
Carry-over motion	5 May 2016	Vol 771 Col 1527

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Stage	Date	Hansard Reference
Select Committee hearings	19 May - 1 December 2016	Transcripts
Select Committee Special Report Session 2016-17	15 December 2016	Report
Promoter's response	January 2017	Response
Grand Committee	10 January 2017 12 January 2017	First sitting Vol. 777 Col. 50-108 Second sitting Vol 777 Col 110-158
Report	24 January 2017	Vol. 778 Col. 574-630
Third Reading	31 January 2017	Vol. 778 Col. 1096-1110
Commons Consideration of Lords Amendments	20 February 2017	Vol. 621 Col. 818-836
Royal Assent	23 February 2017	House of Commons Vol. 621 Col. 1151 House of Lords Vol. 779

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Annex B - Progress of Bill Table

555 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Select Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Select Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8	Clause 8	Clause 8	Clause 8
Section 9	Clause 9	Clause 9	Clause 9	Clause 9	Clause 9
Section 10	Clause 10	Clause 10	Clause 10	Clause 10	Clause 10
Section 11		Clause 11	Clause 11	Clause 11	Clause 11
Section 12	Clause 11	Clause 12	Clause 12	Clause 12	Clause 12
Section 13	Clause 12	Clause 13	Clause 13	Clause 13	Clause 13
Section 14	Clause 13	Clause 14	Clause 14	Clause 14	Clause 14
Section 15	Clause 14	Clause 15	Clause 15	Clause 15	Clause 15
Section 16	Clause 15	Clause 16	Clause 16	Clause 16	Clause 16
Section 17	Clause 16	Clause 17	Clause 17	Clause 17	Clause 17
Section 18	Clause 17	Clause 18	Clause 18	Clause 18	Clause 18
Section 19	Clause 18	Clause 19	Clause 19	Clause 19	Clause 19
Section 20	Clause 19	Clause 20	Clause 20	Clause 20	Clause 20
Section 21	Clause 20	Clause 21	Clause 21	Clause 21	Clause 21
Section 22	Clause 21	Clause 22	Clause 22	Clause 22	Clause 22
Section 23	Clause 22	Clause 23	Clause 23	Clause 23	Clause 23
Section 24	Clause 23	Clause 24	Clause 24	Clause 24	Clause 24
Section 25	Clause 24	Clause 25	Clause 25	Clause 25	Clause 25
Section 26	Clause 25	Clause 26	Clause 26	Clause 26	Clause 26
Section 27	Clause 26	Clause 27	Clause 27	Clause 27	Clause 27
Section 28	Clause 27	Clause 28	Clause 28	Clause 28	Clause 28
Section 29	Clause 28	Clause 29	Clause 29	Clause 29	Clause 29
Section 30	Clause 29	Clause 30	Clause 30	Clause 30	Clause 30

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Select Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Select Committee in the Lords	Bill as amended on Report in the Lords
Section 31	Clause 30	Clause 31	Clause 31	Clause 31	Clause 31
Section 32	Clause 31	Clause 32	Clause 32	Clause 32	Clause 32
Section 33	Clause 32	Clause 33	Clause 33	Clause 33	Clause 33
Section 34	Clause 33	Clause 34	Clause 34	Clause 34	Clause 34
Section 35					Clause 35
Section 36	Clause 34	Clause 35	Clause 35	Clause 35	Clause 36
Section 37	Clause 35	Clause 36	Clause 36	Clause 36	Clause 37
Section 38	Clause 36	Clause 37	Clause 37	Clause 37	Clause 38
Section 39	Clause 37	Clause 38	Clause 38	Clause 38	Clause 39
Section 40	Clause 38	Clause 39	Clause 39	Clause 39	Clause 40
Section 41	Clause 39	Clause 40	Clause 40	Clause 40	Clause 41
Section 42	Clause 40	Clause 41	Clause 41	Clause 41	Clause 42
Section 43	Clause 41	Clause 42	Clause 42	Clause 42	Clause 43
Section 44	Clause 42	Clause 43	Clause 43	Clause 43	Clause 44
Section 45	Clause 43	Clause 44	Clause 44	Clause 44	Clause 45
Section 46	Clause 44	Clause 45	Clause 45	Clause 45	Clause 46
Section 47	Clause 45	Clause 46	Clause 46	Clause 46	Clause 47
Section 48	Clause 46	Clause 47	Clause 47	Clause 47	Clause 48
Section 49	Clause 47	Clause 48	Clause 48	Clause 48	Clause 49
Section 50	Clause 48	Clause 49	Clause 49	Clause 49	Clause 50
Section 51		Clause 50	Clause 50	Clause 50	Clause 51
Section 52	Clause 49	Clause 51	Clause 51	Clause 51	Clause 52
Section 53	Clause 50	Clause 52	Clause 52	Clause 52	Clause 53
Section 54	Clause 51	Clause 53	Clause 53	Clause 53	Clause 54
Section 55	Clause 52	Clause 54	Clause 54	Clause 54	Clause 55
Section 56		Clause 55	Clause 55	Clause 55	Clause 56
Section 57	Clause 53	Clause 56	Clause 56	Clause 56	Clause 57
Section 58	Clause 54	Clause 57	Clause 57	Clause 57	Clause 58
Section 59	Clause 55	Clause 58	Clause 58	Clause 58	Clause 59
Section 60	Clause 56	Clause 59	Clause 59	Clause 59	Clause 60
Section 61	Clause 57	Clause 60	Clause 60	Clause 60	Clause 61
Section 62	Clause 58	Clause 61	Clause 61	Clause 61	Clause 62
Section 63	Clause 59	Clause 62	Clause 62	Clause 62	Clause 63
Section 64	Clause 60	Clause 63	Clause 63	Clause 63	Clause 64

These Explanatory Notes relate to the High Speed Rail (London - West Midlands) Act 2017 (c. 7) which received Royal Assent on 23 February 2017.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Select Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Select Committee in the Lords	Bill as amended on Report in the Lords
Section 65	Clause 61	Clause 64	Clause 64	Clause 64	Clause 65
Section 66			Clause 65	Clause 65	Clause 66
Section 67	Clause 62	Clause 65	Clause 66	Clause 66	Clause 67
Section 68	Clause 63	Clause 66	Clause 67	Clause 67	Clause 68
Section 69	Clause 64	Clause 67	Clause 68	Clause 68	Clause 69
Section 70	Clause 65	Clause 68	Clause 69	Clause 69	Clause 70
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4
Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5
Schedule 6	Schedule 6	Schedule 6	Schedule 6	Schedule 6	Schedule 6
Schedule 7	Schedule 7	Schedule 7	Schedule 7	Schedule 7	Schedule 7
Schedule 8	Schedule 8	Schedule 8	Schedule 8	Schedule 8	Schedule 8
Schedule 9	Schedule 9	Schedule 9	Schedule 9	Schedule 9	Schedule 9
Schedule 10	Schedule 10	Schedule 10	Schedule 10	Schedule 10	Schedule 10
Schedule 11	Schedule 11	Schedule 11	Schedule 11	Schedule 11	Schedule 11
Schedule 12	Schedule 12	Schedule 12	Schedule 12	Schedule 12	Schedule 12
Schedule 13	Schedule 13	Schedule 13	Schedule 13	Schedule 13	Schedule 13
Schedule 14		Schedule 14	Schedule 14	Schedule 14	Schedule 14
Schedule 15	Schedule 14	Schedule 15	Schedule 15	Schedule 15	Schedule 15
Schedule 16	Schedule 15	Schedule 16	Schedule 16	Schedule 16	Schedule 16
Schedule 17	Schedule 16	Schedule 17	Schedule 17	Schedule 17	Schedule 17
Schedule 18	Schedule 17	Schedule 18	Schedule 18	Schedule 18	Schedule 18
Schedule 19	Schedule 18	Schedule 19	Schedule 19	Schedule 19	Schedule 19
Schedule 20	Schedule 19	Schedule 20	Schedule 20	Schedule 20	Schedule 20
Schedule 21	Schedule 20	Schedule 21	Schedule 21	Schedule 21	Schedule 21
Schedule 22	Schedule 21	Schedule 22	Schedule 22	Schedule 22	Schedule 22
Schedule 23	Schedule 22	Schedule 23	Schedule 23	Schedule 23	Schedule 23
Schedule 24	Schedule 23	Schedule 24	Schedule 24	Schedule 24	Schedule 24
Schedule 25					Schedule 25
Schedule 26	Schedule 24	Schedule 25	Schedule 25	Schedule 25	Schedule 26
Schedule 27	Schedule 25	Schedule 26	Schedule 26	Schedule 26	Schedule 27
Schedule 28	Schedule 26	Schedule 27	Schedule 27	Schedule 27	Schedule 28

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Select Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Select Committee in the Lords	Bill as amended on Report in the Lords
Schedule 29	Schedule 27	Schedule 28	Schedule 28	Schedule 28	Schedule 29
Schedule 30	Schedule 28	Schedule 29	Schedule 29	Schedule 29	Schedule 30
Schedule 31	Schedule 29	Schedule 30	Schedule 30	Schedule 30	Schedule 31
Schedule 32	Schedule 30	Schedule 31	Schedule 31	Schedule 31	Schedule 32
Schedule 33	Schedule 31	Schedule 32	Schedule 32	Schedule 32	Schedule 33

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