

SCHEDULES

SCHEDULE 1 **E+W+S**

Articles 2, 5 and 6

AUTHORISED DEVELOPMENT

Commencement Information

II Sch. 1 in force at 22.12.2017, see [art. 1](#)

In the administrative areas of Kent County Council and Ashford Borough Council **E+W+S**

The authorised development is a nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act⁽¹⁾ and associated development within the meaning of section 115(2) of the 2008 Act, comprising—

Work No. 1 – the replacement of 1460 metres of existing tension corrugated safety barrier double sided central reserve barrier with concrete step barrier, from point A to point B on sheets 2 and 5 of the works plans.

Work No. 2A – the construction of a new A2070 dual carriageway link road 720 metres long from a new junction with the M20 Junction 10a generally westwards to a new roundabout junction with the existing A2070. To include the construction of a new private means of access from this road to drainage attenuation pond no. 1 (referred to in Work No. 3(a)).

Work No. 2B – the construction of a new A2070 dual carriageway link road approximately 720 metres long from a new junction with the M20 Junction 10a generally westwards to a new roundabout junction with the existing A2070. To include:

- (a) the construction of a new private means of access from this road to drainage attenuation pond no. 1;
- (b) the construction of a new roundabout junction including a spur to the south for the Stour Park site.

Work No. 3 – the construction of a new Junction 10a gyratory and two bridges over the existing M20 main carriageway. To include:

- (a) the construction of drainage attenuation pond no. 1 with associated drainage facilities, access and landscaping at the locations shown on sheet 3 of the works plans;
- (b) the construction of drainage attenuation pond no. 3 with associated drainage facilities, access and landscaping at the locations shown on sheet 2 of the works plans;
- (c) the re-alignment of the A20 Hythe Road at the location of this junction to create two new interfaces with the M20 Junction 10a main circulatory carriageway as shown on sheets 2 and 5 of the works plans;
- (d) the demolition of the Highfield Lane Overbridge, Wyevale Garden Centre and Highfield Bungalow.

⁽¹⁾ Section 22 was substituted by article 3 of [S.I. 2013/1883](#).

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Work No. 4 – the re-alignment of the A2070 Bad Munstereifel Road at the location of the new A2070 link road roundabout to create two new interfaces with the circulatory carriageway of the new roundabout. To include the construction of drainage attenuation pond no. 2 with associated drainage facilities, access and landscaping and the provision of 5169 square metres of replacement open space land including removal of redundant carriageway and landscaping.

Work No. 5 – the re-alignment of Kingsford Street onto Highfield Lane.

Work No. 6 – the construction of a new cycle and footbridge of 55 metres in length over the M20 main carriageway to the east of M20 Junction 10a and connecting together Kingsford Street and Hythe Road.

Work No. 7 – associated development comprising alteration works to the existing road markings, traffic signs and traffic signals on the M20 Junction 10 and its approaches.

Work No. 8 – the construction of a new cycle and footbridge over the A2070 main carriageway to the south of the new A2070 link road roundabout and the demolition of the existing Church Road footbridge.

Work No. 9 – alteration works to Barrey Road.

Work No. 10 – the construction of a new roundabout junction to connect the A2070 to the A2070 link road.

Work No. 11 – the strengthening of the existing Swatfield Bridge on the A20 Hythe Road.

Work No. 12 – the closure of the existing M20 Junction 10 eastbound on-slip. To include—

- (a) construction of a barrier at the interfaces with the existing Junction 10 circulatory carriageway;
- (b) construction of a barrier at the interfaces with the existing M20 main carriageway;
- (c) remediation and landscaping works.

Work No. 13 – the closure of the existing M20 Junction 10 westbound off-slip. To include:

- (a) construction of a barrier at the interfaces with the existing Junction 10 circulatory carriageway;
- (b) construction of a barrier at the interfaces with the existing M20 main carriageway;
- (c) remediation and landscaping works.

Work No. 14 – the construction of a new eastbound off-slip from the M20 main carriageway to the circulatory carriageway of Junction 10a, 300 metres in length.

Work No. 15 – the construction of a new westbound on-slip from the circulatory carriageway of Junction 10a to the M20 main carriageway, 463 metres in length.

Work No. 16 – the re-alignment of the A20 Hythe Road west from the new M20 Junction 10a. To include the construction of a new private means of access from this road to drainage attenuation pond no. 3 (referred to in Work No. 3(b)).

Work No. 17 – the re-alignment of the A20 Hythe Road east from the new M20 Junction 10a. To include the construction of a new private means of access.

Work No. 18 – the construction of a new eastbound on-slip from the circulatory carriageway of Junction 10a to the M20 main carriageway, 372 metres in length.

Work No. 19 – the construction of a new westbound off-slip from the M20 main carriageway to the circulatory carriageway of Junction 10a, 329 metres in length.

Work No. 20 – the realignment of the A2070 and amendments to the junction layout between Barrey Road and the A2070.

Work No. 21 – the installation of 1980 metres of motorway communication cables.

Work No. 22 – the diversion of 460 metres of gas pipeline to accommodate the widened footprint of the M20 presented by the Junction 10a slip roads and the new footprint of the A2070 link road.

Work No. 23 – the diversion of 220 metres of sewer to accommodate the construction and operation of the new M20 Junction 10a.

Work No. 24 – the diversion of 950 metres of telecoms equipment to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a.

Work No. 25 – the diversion of 850 metres of water pipeline to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a.

Work No. 26 – the diversion of 500 metres of telecoms equipment to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a. Additionally, the diversion of 400 metres of telecoms equipment to accommodate the realignment of the A2070 and the construction and operation of the new A2070 link road roundabout.

Work No. 27 – the diversion of 500 metres of telecoms equipment to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a. Additionally, the diversion of 400 metres of telecoms equipment to accommodate the realignment of the A2070 and the construction and operation of the new A2070 link road roundabout.

Work No. 28 – the diversion of 500 metres of power cables to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a. Additionally, the diversion of 650 metres of power cables to accommodate the realignment of the A2070 and the construction and operation of the new A2070 link road roundabout.

Work No. 29 – the diversion of 50 metres of communication cables to accommodate the installation of the replacement Church Road footbridge.

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

- (a) alteration to the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by reducing or increasing the width of any kerb, footpath, footway, cycle track or verge within the street; and altering the level of any such kerb, footpath, footway, cycle track or verge;
- (b) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (c) refurbishment works to any existing bridge;
- (d) the strengthening, alteration or demolition of any building;
- (e) ramps, means of access, non-motorised links, footpaths, cycle tracks and crossing facilities;
- (f) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, barriers, pumping stations, parapets, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (g) street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (h) works to place, alter, remove or maintain street furniture or apparatus in a street, or apparatus in other land, including mains, sewers, drains, pipes, cables, ducts and lights;
- (i) works to alter the course of or otherwise interfere with a watercourse;
- (j) landscaping, noise bunds and barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (k) works for the benefit or protection of land affected by the authorised development;

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- (l) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage, site levelling); remediation of contamination;
- (m) the felling of trees;
- (n) construction compounds and working sites, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, temporary worker accommodation facilities, welfare facilities, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences;
- (o) the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
- (p) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised development.

SCHEDULE 2 **E+W+S**

Article 5

REQUIREMENTS

PART 1 **E+W+S**

REQUIREMENTS

Interpretation **E+W+S**

1. In this Schedule—

“CEMP” means the construction environmental management plan;

“contaminated land” has the same meaning as that given in section 78A(2) of the Environmental Protection Act 1990;

“County Archaeologist” means the individual appointed as such by the relevant planning authority;

“Ecological Clerk of Works” means the individual appointed as such by the undertaker;

“European protected species” has the same meaning as in regulations 40 (European protected species of animals) and 44 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2010(3);

“HEMP” means the handover environmental management plan, being the CEMP to be developed towards the end of the construction of the authorised development which is to contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;

(2) Inserted by section 57 of the Environment Act 1995; and commenced by S.I. 2000/340.

(3) S.I. 2010/490, to which there are amendments not relevant to this Order.

- (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.

“LEMP” means the landscape and ecological management plan, including a reptile mitigation strategy;

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

“Stour Park site” means the land to the south of the authorised development that is designated by Policy U19 – Sevington, in the Ashford Borough Council Urban Sites and Infrastructure Development Plan Document 2012.

Commencement Information

I2 Sch. 2 para. 1 in force at 22.12.2017, see [art. 1](#)

Time limits **E+W+S**

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

Commencement Information

I3 Sch. 2 para. 2 in force at 22.12.2017, see [art. 1](#)

Construction Environmental Management Plan **E+W+S**

3.—(1) No part of the authorised development is to commence until a CEMP has been prepared in consultation with the relevant planning authority, the local highway authority and the Environment Agency and submitted to and approved in writing by the Secretary of State.

(2) The CEMP must—

- (a) be substantially in accordance with the outline construction environmental management plan certified under article 44 (certification of plans, etc.) except that measures may be added to take account of and accommodate within the CEMP any turning loop constructed or under construction by the local highway authority on plot 4/16/c as identified in the book of reference and on the land plans at the time of commencement of the authorised development;
- (b) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) incorporate the measures as detailed in the environmental statement;
- (d) include information on the control measures required to mitigate and reduce potential impacts which reflect the mitigation measures included in the environmental statement;
- (e) require adherence to working hours of 07:00 to 18:00 on Mondays to Fridays and 07:00 to 13:00 on Saturdays, except for—

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- (i) works requiring the full or partial closure of, or otherwise adversely affecting the operation of, the M20 carriageway;
 - (ii) works associated with the demolition of the Church Road footbridge and the Highfield Lane bridge;
 - (iii) works associated with the construction of the new Church Road Bridge, the new Kingsford Street Bridge, the two new Junction 10a interchange bridges over the M20 carriageway and the A20 Swatfield bridge;
 - (iv) works associated with the diversion of existing utilities;
 - (v) works associated with traffic management and signal changes;
 - (vi) works associated with tie-ins to existing carriageways; and
 - (vii) any emergency works;
- (f) include management plans, working methods and mitigation measures for each of the topics covered in the environmental statement, including—
- (i) LEMP;
 - (ii) Arboricultural Method Statement;
 - (iii) Archaeological Written Scheme of Investigation;
 - (iv) Japanese Knotweed Management Plan;
 - (v) Materials Management Plan;
 - (vi) Soil Handling and Management Plan;
 - (vii) Site Waste Management Plan;
 - (viii) Community Relations Strategy;
 - (ix) Groundwater Monitoring Strategy; and
 - (x) Noise and Vibration Monitoring Strategy.
- (3) The authorised development must be constructed in accordance with the approved CEMP.
- (4) Upon completion of construction of the authorised development the CEMP must be converted into the HEMP which may include measures to take account of and accommodate within the HEMP any turning loop constructed or to be constructed by the local highway authority on plot 4/16/c as identified in the book of reference and on the land plans.
- (5) The authorised development must be operated and maintained in accordance with the HEMP.

Commencement Information

I4 Sch. 2 para. 3 in force at 22.12.2017, see [art. 1](#)

Details of consultation **E+W+S**

4.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule, the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

(2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

(3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.

(4) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under sub-paragraph (1) the reasons why the consultation responses have not been reflected in the submitted details.

Commencement Information

I5 Sch. 2 para. 4 in force at 22.12.2017, see [art. 1](#)

Landscaping **E+W+S**

5.—(1) No part of the authorised development is to commence until a written landscaping scheme for that part has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority and the local highway authority.

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

(3) The landscaping scheme prepared under sub-paragraph (1) must be based on the environmental masterplan and the results of the surveys undertaken under sub-paragraph (2) and must take account of and accommodate any turning loop constructed or under construction by the local highway authority on plot 4/16/c as identified in the book of reference and on the land plans at the time of commencement of the authorised development.

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

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

Commencement Information

I6 Sch. 2 para. 5 in force at 22.12.2017, see [art. 1](#)

Implementation and maintenance of landscaping **E+W+S**

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

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

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

Commencement Information

I7 Sch. 2 para. 6 in force at 22.12.2017, see [art. 1](#)

Fencing **E+W+S**

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

Commencement Information

I8 Sch. 2 para. 7 in force at 22.12.2017, see [art. 1](#)

Land and groundwater contamination **E+W+S**

8.—(1) No part of the authorised development is to commence until a contamination risk assessment in respect of controlled waters has been produced which is to include details of—

- (a) any existing sources of contamination within the Order limits that may be affected by the carrying out of the authorised development;
- (b) any reasonably required protective measures to ensure that the carrying out of the authorised development does not make worse any adverse conditions or risks associated with such existing sources of contamination; and
- (c) appropriate remediation strategies and mitigation measures to address any historic contamination which is shown to be having significant, unacceptable effects on the environment within the context of the proposed works,

and the assessment has been submitted to and approved by the Secretary of State following consultation with the Environment Agency.

(2) The steps and measures that are identified as necessary for the purposes of carrying out the authorised development in the assessment referred to in sub-paragraph (1) must be implemented as part of the authorised development.

(3) In the event that contaminated material, including impacted groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental statement, the undertaker must cease construction of the authorised development in the vicinity of that contamination and must report it immediately in writing to the Secretary of State, the Environment Agency and relevant planning authority, and in agreement with the Environment Agency and the relevant planning authority undertake a risk assessment of the contamination, and sub-paragraphs (4) and (5) will apply.

(4) Where the undertaker determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be prepared submitted to and approved in writing by the Secretary of State following consultation with the Environment Agency and the relevant planning authority.

(5) Remedial measures must be carried out in accordance with the approved scheme.

Commencement Information

I9 Sch. 2 para. 8 in force at 22.12.2017, see [art. 1](#)

Archaeology **E+W+S**

9.—(1) No part of the authorised development is to commence until for that part an archaeological framework strategy for the investigation and mitigation of areas of archaeological interest, reflecting the mitigation measures included in chapter 6 of the environmental statement, with provision for sub-written schemes of investigation for each area and each phase (evaluation or detailed excavation or watching brief), has been prepared in consultation with the relevant planning authority and the local highway authority, agreed with the County Archaeologist and submitted to and approved in writing by the Secretary of State.

(2) The authorised development must be carried out in accordance with the archaeological framework strategy and sub-written schemes of investigation referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

(3) A programme of archaeological reporting, post excavation and publication required as part of the archaeological framework strategy and sub-written schemes of investigation referred to in sub-paragraph (1) must be agreed with the County Archaeologist and implemented within a timescale agreed with the County Archaeologist and deposited with the Historic Environment Record of the relevant planning authority within two years of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority.

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be subject to appropriate mitigation as set out in the archaeological framework strategy and mitigation agreed with the County Archaeologist.

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

(6) On completion of the authorised development, suitable resources and provisions for long term storage of the archaeological archive will be agreed with the County Archaeologist.

Commencement Information

I10 Sch. 2 para. 9 in force at 22.12.2017, see [art. 1](#)

Protected species **E+W+S**

10.—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease construction works and report it immediately to the Ecological Clerk of Works.

(2) The undertaker must prepare a written scheme for the protection and mitigation measures for any protected species that were not previously identified in the environmental statement or nesting birds found when carrying out the authorised development. Where nesting birds are identified works should cease within 10 metres of the nest until birds have fledged and the nest is no longer in use.

(3) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

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Commencement Information

I11 Sch. 2 para. 10 in force at 22.12.2017, see [art. 1](#)

Traffic management **E+W+S**

11.—(1) No part of the authorised development is to commence until a traffic management plan for the construction of the authorised development, substantially in accordance with the draft traffic management plan, has been submitted to and approved in writing by the Secretary of State following consultation with the relevant highway authority.

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

Commencement Information

I12 Sch. 2 para. 11 in force at 22.12.2017, see [art. 1](#)

Detailed design **E+W+S**

12.—(1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the works plans and the engineering section drawings, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the works plans and the engineering section drawings showing departures from the preliminary design would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans or engineering section drawings and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Commencement Information

I13 Sch. 2 para. 12 in force at 22.12.2017, see [art. 1](#)

Surface and foul water drainage **E+W+S**

13.—(1) No part of the authorised development is to commence until written details of the surface and foul water drainage system, reflecting the mitigation measures in chapter 14 of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority, the local highway authority and the Environment Agency.

(2) The drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority, the local highway authority and the Environment Agency.

Commencement Information

I14 Sch. 2 para. 13 in force at 22.12.2017, see [art. 1](#)

Flood compensatory storage **E+W+S**

14.—(1) No part of the authorised development is to commence until a detailed flood compensatory storage scheme is submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(2) The scheme prepared under sub-paragraph (1) must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year plus 105% climate change allowance event.

(3) The scheme must be fully implemented as approved and subsequently maintained.

Commencement Information

I15 Sch. 2 para. 14 in force at 22.12.2017, see [art. 1](#)

Approvals and amendments to approved details **E+W+S**

15. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the Secretary of State.

Commencement Information

I16 Sch. 2 para. 15 in force at 22.12.2017, see [art. 1](#)

Alternative A2070 options **E+W+S**

16.—(1) Only one of A2070 Option A and A2070 Option B may be constructed.

(2) The undertaker must not give notice in writing to the relevant planning authority and local highway authority of its intention to construct the A2070 Option B for the purposes of either or both of articles 21 and 24 unless a planning permission has first been granted for the development of the Stour Park site.

Commencement Information

I17 Sch. 2 para. 16 in force at 22.12.2017, see [art. 1](#)

PART 2 **E+W+S**

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements **E+W+S**

17.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a

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requirement) included in this Order, the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 18; or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report that considers it likely that the subject matter of the application is to give rise to any materially new or materially worse environmental effects in comparison with the authorised development as approved,

then the application is taken to have been refused by the Secretary of State at the end of that period.

Commencement Information

I18 Sch. 2 para. 17 in force at 22.12.2017, see [art. 1](#)

Further information **E+W+S**

18.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary, the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within this 21 day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 17 and in this paragraph.

(4) In this paragraph, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(4);

(4) 1971 c. 80.

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Commencement Information

I19 Sch. 2 para. 18 in force at 22.12.2017, see [art. 1](#)

Register of requirements **E+W+S**

19.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Commencement Information

I20 Sch. 2 para. 19 in force at 22.12.2017, see [art. 1](#)

Anticipatory steps towards compliance with any requirement **E+W+S**

20. If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

Commencement Information

I21 Sch. 2 para. 20 in force at 22.12.2017, see [art. 1](#)

SCHEDULE 3 **E+W+S**

Articles 13 and 17

CLASSIFICATIONS OF ROADS, ETC.

PART 1 **E+W+S**

SPECIAL ROADS

Commencement Information

I22 Sch. 3 Pt. 1 in force at 22.12.2017, see [art. 1](#)

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The M20 Junction 10a Development Consent Order 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Ashford Borough	M20 eastbound off slip onto Junction 10a between point D and point E on the classification of roads plans, comprising 307 metres.
Ashford Borough	M20 eastbound on slip onto the M20 from Junction 10a between point K and point L on the classification of roads plans, comprising 379 metres.
Ashford Borough	M20 westbound off slip onto Junction 10a between point N and point M on the classification of roads plans, comprising 340 metres.
Ashford Borough	M20 westbound on slip onto the M20 from Junction 10a between point G and point F on the classification of roads plans, comprising 463 metres.

PART 2 **E+W+S**

TRUNK ROADS

Commencement Information

I23 Sch. 3 Pt. 2 in force at 22.12.2017, see [art. 1](#)

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Ashford Borough	In the event of construction of the A2070 Option A only, A2070 link road between point Q and point R on the classification of roads plans, comprising 693 metres.
Ashford Borough	In the event of construction of the A2070 Option A only, A2070 link road between point S and point T on the classification of roads plans, comprising 722 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, A2070 link road between point Q and point CC on the classification of roads plans, comprising 338 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, A2070 link road between point II and point R on the classification of roads plans, comprising 288 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, A2070 link road between point S and point DD on the classification of roads plans, comprising 363 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, A2070 link road between point HH and point T on the classification of roads plans, comprising 288 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, Stour Park roundabout circulatory carriageway, comprising 200 metres.

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Ashford Borough	A2070 Bad Munstereifel Road between point U and point V on the classification of roads plans, comprising 237 metres.
Ashford Borough	A2070 Bad Munstereifel Road between point W and point X on the classification of roads plans, comprising 225 metres.
Ashford Borough	A2070 link road roundabout circulatory carriageway, comprising 200 metres.
Ashford Borough	A2070 Bad Munstereifel Road, between point Y and point Z on the classification of roads plans, comprising 354 metres.
Ashford Borough	A2070 Bad Munstereifel Road, between point AA and point BB on the classification of roads plans, comprising 348 metres.
Ashford Borough	M20 Junction 10a roundabout circulatory carriageway, comprising 490 metres.

PART 3 **E+W+S**

CLASSIFIED ROADS

Commencement Information

I24 Sch. 3 Pt. 3 in force at 22.12.2017, see [art. 1](#)

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length. of road</i>
Ashford Borough	A20 Hythe Road between point A and points B and C on the classification of roads plans, comprising 186 metres.
Ashford Borough	A20 Hythe Road between points H and I and point J on the classification of roads plans, comprising 249 metres.

PART 4 **E+W+S**

UNCLASSIFIED ROADS

Commencement Information

I25 Sch. 3 Pt. 4 in force at 22.12.2017, see [art. 1](#)

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The M20 Junction 10a Development Consent Order 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(1) <i>Area</i>	(2) <i>Length. of road</i>
Ashford Borough	Kingsford Street between point O and point P on the classification of roads plans, comprising 151 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, spur to Stour Park site between point FF and points EE and GG on the classification of roads plans, comprising 68 metres.

PART 5 **E+W+S**

SPEED LIMITS

Commencement Information

I26 Sch. 3 Pt. 5 in force at 22.12.2017, see [art. 1](#)

(1) <i>Parish(es)</i>	(2) <i>Road name, number and length</i>	(3) <i>Speed Limit</i>
Ashford, Mersham	A20, Hythe Road. From a point 40 metres north west of the M20 Junction 10a circulatory carriageway along its length to where it joins the M20 Junction 10a circulatory carriageway for a total distance of 40 metres. As shown on sheet 2 of the speed limit plans.	40 miles per hour
Mersham	A20, Hythe Road. From where the A20 diverges/merges with the M20 Junction 10a circulatory carriageway along its length to a point 45 metres east of this location. As shown on sheet 2 of the speed limit plans.	40 miles per hour
Mersham	A20, Hythe Road. From a point 45 metres east of the location where the A20 diverges/merges with the M20 Junction 10a circulatory carriageway to a point 11 metres from the centre line of the junction of the A20 with Bockham Lane, a length of 386 metres.	50 miles per hour

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(1) <i>Parish(es)</i>	(2) <i>Road name, number and length</i>	(3) <i>Speed Limit</i>
	As shown on sheet 2 of the speed limit plans.	
Mersham	M20 Junction 10a circulatory carriageway. For the whole length of the circulatory carriageway around the M20 Junction 10a roundabout, a length of 490 metres. As shown on sheets 2 and 3 of the speed limit plans.	40 miles per hour
Ashford, Mersham	M20 eastbound off slip onto Junction 10a. From the start of the diverge with the M20 main carriageway along its length to the point where it merges with the new Junction 10a circulatory carriageway, a length of 307 metres. As shown on sheets 1 and 2 of the speed limit plans.	70 miles per hour
Ashford, Mersham	M20 eastbound on slip onto the M20 from Junction 10a. From the start of the diverge from the new Junction 10a circulatory carriageway along its length to its merge with the M20 main carriageway, a length of 379 metres. As shown on sheet 2 of the speed limit plans.	70 miles per hour
Mersham	M20 westbound off slip onto Junction 10a. From the start of the diverge with the M20 main carriageway along its length to its merge with the new Junction 10a circulatory carriageway, a length of 340 metres. As shown on sheet 2 of the speed limit plans.	70 miles per hour
Mersham	M20 westbound on slip onto the M20 from Junction 10a. From the start of the diverge from the new Junction 10a circulatory carriageway along its length to its merge with the M20 main carriageway, a length of 463 metres.	70 miles per hour

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(1) <i>Parish(es)</i>	(2) <i>Road name, number and length</i>	(3) <i>Speed Limit</i>
	As shown on sheets 1 and 3 of the speed limit plans.	
Mersham, Sevington	Kingsford Street. From a point 46 metres south-west of the current junction between Kingsford Street and Highfield Lane for a length of 137 metres to the point where the newly re-aligned road joins existing Kingsford Street. As shown on sheet 2 of the speed limit plans.	40 miles per hour
Mersham, Sevington	In the event of construction of the A2070 Option A only. New A2070 link road (westbound). From the diverge of the link road from the M20 Junction 10a circulatory carriageway heading west along its length to its merge with the new A2070 roundabout circulatory carriageway for a distance of 722 metres. As shown on sheets 2 and 3 of the speed limit plans.	40 miles per hour
Mersham, Sevington	In the event of construction of the A2070 Option A only. New A2070 link road (eastbound). From the diverge of the link road from the new A2070 roundabout circulatory carriageway heading east along its length to its merge with the M20 Junction 10a circulatory carriageway for a distance of 693 metres. As shown on sheets 2 and 3 of the speed limit plans.	40 miles per hour
Mersham, Sevington	In the event of construction of the A2070 Option B only. New A2070 link road (westbound). From the diverge of the link road from the M20 Junction 10a circulatory carriageway heading west along its length to its merge with the new Stour Park roundabout	40 miles per hour

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(1) <i>Parish(es)</i>	(2) <i>Road name, number and length</i>	(3) <i>Speed Limit</i>
	<p>circulatory carriageway for a distance of 363 metres.</p> <p>As shown on sheet 4 of the speed limit plans.</p>	
Mersham, Sevington	<p>In the event of construction of the A2070 Option B only.</p> <p>New A2070 link road (westbound).</p> <p>From the diverge of the link road from the new Stour Park roundabout circulatory carriageway heading west along its length to its merge with the new A2070 roundabout circulatory carriageway for a distance of 288 metres.</p> <p>As shown on sheet 4 of the speed limit plans.</p>	40 miles per hour
Mersham, Sevington	<p>In the event of construction of the A2070 Option B only.</p> <p>New A2070 link road (eastbound).</p> <p>From the diverge of the link road from the new A2070 roundabout circulatory carriageway heading east along its length to its merge with the new Stour Park roundabout circulatory carriageway for a distance of 288 metres.</p> <p>As shown on sheet 4 of the speed limit plans.</p>	40 miles per hour
Mersham, Sevington	<p>In the event of construction of the A2070 Option B only.</p> <p>New A2070 link road (eastbound).</p> <p>From the diverge of the link road from the new Stour Park roundabout circulatory carriageway heading east along its length to its merge with the M20 Junction 10a circulatory carriageway for a distance of 338 metres.</p> <p>As shown on sheet 4 of the speed limit plans.</p>	40 miles per hour

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(1) <i>Parish(es)</i>	(2) <i>Road name, number and length</i>	(3) <i>Speed Limit</i>
Mersham, Sevington	<p>In the event of construction of the A2070 Option B only.</p> <p>New Stour Park roundabout circulatory carriageway.</p> <p>For the whole length of the circulatory carriageway around the new Stour Park roundabout, a length of 200 metres.</p> <p>As shown on sheet 4 of the speed limit plans.</p>	40 miles per hour
Sevington	<p>New A2070 roundabout circulatory carriageway.</p> <p>For the whole length of the circulatory carriageway around the new A2070 roundabout, a length of 200 metres.</p> <p>As shown on sheet 3 of the speed limit plans.</p>	40 miles per hour
Ashford, Sevington	<p>A2070 Bad Munstereifel Road (southbound).</p> <p>From a point 74 metres south of the diverge from the M20 Junction 10 circulatory carriageway along its length to where it joins the A2070 roundabout circulatory carriageway for a total distance of 370 metres.</p> <p>As shown on sheets 1 and 3 of the speed limit plans.</p>	40 miles per hour
Ashford, Sevington	<p>A2070 Bad Munstereifel Road (northbound).</p> <p>From where it leaves the A2070 roundabout circulatory carriageway along its length to a point 70 metres south of the merge to the M20 Junction 10 circulatory carriageway for a total distance of 394 metres.</p> <p>As shown on sheets 1 and 3 of the speed limit plans.</p>	40 miles per hour
Sevington	A2070 Bad Munstereifel Road (southbound).	40 miles per hour

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(1) <i>Parish(es)</i>	(2) <i>Road name, number and length</i>	(3) <i>Speed Limit</i>
	<p>From where it leaves the A2070 roundabout circulatory carriageway along its length to a point 27 metres south of the centreline of the junction with Church Road for a total distance of 394 metres.</p> <p>As shown on sheet 3 of the speed limit plans.</p>	
Sevington	<p>A2070 Bad Munstereifel Road (northbound).</p> <p>From a point 27 metres south of the centreline of the junction with Church Road along its length to where it joins the A2070 roundabout circulatory carriageway for a total distance of 395 metres.</p> <p>As shown on sheet 3 of the speed limit plans.</p>	40 miles per hour
Sevington	<p>Barrey Road.</p> <p>From the junction with the A2070 to a point 46 metres to the west.</p> <p>As shown on sheet 3 of the speed limit plans.</p>	40 miles per hour

PART 6 **E+W+S**

TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

Commencement Information

I27 Sch. 3 Pt. 6 in force at 22.12.2017, see [art. 1](#)

(1) <i>Parish(es)</i>	(2) <i>Road name, number and length</i>	(3) <i>Measures</i>
Ashford, Sevington	<p>A2070 Bad Munstereifel Road (northbound).</p> <p>From point A to point B on sheets 1 and 3 of the traffic regulation measures plans, for a total distance of 369 metres.</p>	Clearway (to include verges, hard shoulders and slip roads)

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<i>(1)</i> <i>Parish(es)</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
Ashford, Sevington	A2070 Bad Munstereifel Road (southbound). From point E to point F on sheets 1 and 3 of the traffic regulation measures plans, for a total distance of 369 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington	A2070 Bad Munstereifel Road (northbound). From point K to point L on sheet 3 of the traffic regulation measures plans, for a total distance of 341 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington	A2070 Bad Munstereifel Road (southbound). From point M to point N on sheet 3 of the traffic regulation measures plans, for a total distance of 333 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington	New A2070 roundabout circulatory carriageway. For the whole length of the circulatory carriageway around the new A2070 roundabout, a length of 200 metres. As shown on sheet 3 of the traffic regulation measures plans.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option A only. New A2070 link road (eastbound). From point H to point G on sheets 2 and 3 of the traffic regulation measures plans, for a total distance of 636 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option A only. New A2070 link road (westbound). From point I to point J on sheets 2 and 3 of the traffic regulation measures plans, for a total distance of 657 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option B only.	Clearway (to include verges, hard shoulders and slip roads)

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<i>(1)</i> <i>Parish(es)</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
	<p>New A2070 link road (eastbound).</p> <p>From point H to point R on sheet 4 of the traffic regulation measures plans, for a total distance of 288 metres.</p>	
Sevington, Mersham	<p>In the event of construction of the A2070 Option B only.</p> <p>New A2070 link road (eastbound).</p> <p>From point O to point G on sheet 4 of the traffic regulation measures plans, for a total distance of 282 metres.</p>	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	<p>In the event of construction of the A2070 Option B only.</p> <p>New A2070 link road (westbound).</p> <p>From point I to point P on sheet 4 of the traffic regulation measures plans, for a total distance of 302 metres.</p>	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	<p>In the event of construction of the A2070 Option B only.</p> <p>New A2070 link road (westbound).</p> <p>From point Q to point J on sheet 4 of the traffic regulation measures plans, for a total distance of 288 metres.</p>	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	<p>In the event of construction of the A2070 Option B only.</p> <p>New Stour Park roundabout circulatory carriageway.</p> <p>For the whole length of the circulatory carriageway around the new Stour Park roundabout, a length of 200 metres.</p> <p>As shown on sheet 4 of the traffic regulation measures plans.</p>	Clearway (to include verges, hard shoulders and slip roads)

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PART 7 **E+W+S**

REVOCATIONS & VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

Commencement Information

I28 Sch. 3 Pt. 7 in force at 22.12.2017, see [art. 1](#)

<i>(1)</i> <i>Parish(es)</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Title of Order</i>	<i>(4)</i> <i>Revocations or Variations</i>
Ashford, Sevington	A2070 Bad Munstereifel Road. From point C to point D on sheets 1 and 3 of the traffic regulation measures plans, a total distance of 748 metres.	The Kent County Council (Various Road, Ashford) (Prohibition of Waiting) (Clearway) Order 1995	Order to be varied to remove the existing clearway over this length.

PART 8 **E+W+S**

FOOTPATHS, CYCLE TRACKS AND FOOTWAYS

Commencement Information

I29 Sch. 3 Pt. 8 in force at 22.12.2017, see [art. 1](#)

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of Footpath/Cycle track/Footway</i>
Ashford Borough	337 metres combined footway and cycle track from point A to point B on the rights of way and access plans.
Ashford Borough	90 metres combined footway and cycle track from point C to point D on the rights of way and access plans.
Ashford Borough	288 metres cycle track with a right of way on foot from point E to point F on the rights of way and access plans.
Ashford Borough	In the event of construction of the A2070 Option A only, 1298 metres combined footway and cycle track from point F to point G on the rights of way and access plans.
Ashford Borough	In the event of construction of the A2070 Option B only, 874 metres combined footway and cycle track from point F to point N on the rights of way and access plans.

(1) <i>Area</i>	(2) <i>Length of Footpath/Cycle track/Footway</i>
Ashford Borough	In the event of construction of the A2070 Option B only, 537 metres combined footway and cycle track from point O to point G on the rights of way and access plans.
Ashford Borough	425 metres cycle track with a right of way on foot from point G to point H on the rights of way and access plans.
Ashford Borough	50 metres footpath from point I to point K on the rights of way and access plans.
Ashford Borough	291 metres cycle track with a right of way on foot from point J to point K on the rights of way and access plans.
Ashford Borough	210 metres combined footway and cycle track from point K to point L on the rights of way and access plans.
Ashford Borough	81 metres combined footway and cycle track from point M to point N on the rights of way and access plans.

SCHEDULE 4 **E+W+S**

Articles 15 and 25

PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS
& PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

In relating this Schedule to the rights of way and access plans, the provisions described in this Schedule are shown on the rights of way and access plans in the following manner—

- (a) Existing highways to be stopped up, as described in column (2) of Part 1 and Part 2 of this Schedule, are shown by thick black diagonal hatching (as shown in the key on the rights of way and access plans) over the extent of the area to be stopped up, which is described in column (3) of Part 1 and Part 2 of this Schedule.
- (b) New highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 2 of this Schedule, are shown by red cross-hatching (for motorways and trunk roads), blue cross-hatching (for other classified roads and highways) and solid blue shading (for footpaths, footways and cycle tracks) (as shown in the key on the rights of way and access plans) and are given a reference label (a capital letter in a circle) and will be a road unless the word ‘footpath’, ‘bridleway’, ‘footway’ or ‘cycle track’ appears beneath its reference letter in column (4) of Part 2 of this Schedule.
- (c) Private means of access to be stopped up, as described in column (2) of Parts 3 and 4 of this Schedule, are shown by solid black shading (as shown in the key on the rights of way and access plans) over the extent of stopping up described in column (3) of Parts 3 and 4 of this Schedule, and are given a reference label (a lower case letter in a circle).
- (d) New private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 3 of this Schedule, are shown by black line hatching (as shown in the key on the rights of way and access plans) and are given a reference label (a number in a circle).

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PART 1 **E+W+S**

HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

Commencement Information

I30 Sch. 4 Pt. 1 in force at 22.12.2017, see [art. 1](#)

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
Mersham	Highfield Lane overbridge	From the junction with Kingsford Street to the junction with the A20 Hythe Road, a distance of 170 metres, shown on sheet 2 of the rights of way and access plans.
Ashford	Public right of way AU63C	From its crossing of the Old Mill Stream to where it meets public right of way AU53, a distance of 177 metres, shown on sheets 1 and 3 of the rights of way and access plans.
Sevington	Public right of way AE337A	From where it crosses the new A2070 link road to where it meets the Old Mill Stream, a distance of 260 metres, shown on sheet 3 of the rights of way and access plans.
Ashford	Public right of way AU65	From its crossing of the Old Mill Stream to where it meets public right of way AU53 to the north, a distance of 172 metres, shown on sheets 1 and 3 of the rights of way and access plans.
Ashford	Public right of way AU53	From where it crosses the Old Mill Stream to where it meets the M20 Junction 10 circulatory carriageway, a distance of 647 metres, shown on sheet 1 of the rights of way and access plans.
Mersham	Public right of way AE636	From where it meets the Old Mill Stream to where it meets Highfield Lane, a distance of 288 metres, shown on sheets 1, 2 and 3 of the rights of way and access plans.
Sevington	Public Right of Way AE338	From where it crosses the new A2070 link road to where it meets the Old Mill Stream, a distance of

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
		120 metres, shown on the rights of way and access plans sheet 3.
Sevington	Public Right of Way AE339	From the Barrey Road/Church Road junction west of the A2070 Bad Munstereifel Road to where it meets Church Road again, east of the A2070 Bad Munstereifel Road, a distance of 184 metres, shown on sheet 3 of the rights of way and access plans.

PART 2 **E+W+S**

HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

Commencement Information

I31 Sch. 4 Pt. 2 in force at 22.12.2017, see [art. 1](#)

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New highway to be substituted/provided</i>
Mersham	A20 Hythe Road	From the junction with Highfield Lane to a point 157 metres west on the existing A20, shown on sheet 2 of the rights of way and access plans.	Reference C Re-aligned A20 Hythe Road west from the M20 Junction 10a circulatory carriageway shown on sheets 1 and 2 of the rights of way and access plans.
Mersham	A20 Hythe Road	From the junction with Highfield Lane to a point 190 metres east on the existing A20, shown on sheet 2 of the rights of way and access plans.	Reference D Re-aligned A20 Hythe Road east from the M20 Junction 10a circulatory carriageway shown on sheets 1 and 2 of the rights of way and access plans.

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(1) Area	(2) Highway to be stopped up	(3) Extent of stopping up	(4) New highway to be substituted/provided
Ashford	M20 Junction 10 eastbound on slip	From the diverge from the M20 Junction 10 main circulatory carriageway to the merge with the M20 eastbound main carriageway shown on sheet 1 of the rights of way and access plans.	Reference E M20 Junction 10a eastbound on slip shown on sheet 2 of the rights of way and access plans.
Ashford	M20 Junction 10 westbound off slip	From the diverge from the M20 westbound main carriageway to the merge with the M20 Junction 10 circulatory carriageway shown on sheet 1 of the rights of way and access plans.	Reference F M20 Junction 10a westbound off slip shown on sheet 2 of the rights of way and access plans.
Mersham	Kingsford Street and Highfield Lane	From a point on Kingsford Street 100 metres east of the junction with Highfield Lane, west to the junction with Highfield Lane and then south on Highfield Lane for a distance of 46 metres, shown on sheet 2 of the rights of way and access plans.	Reference I Re-aligned Kingsford Street and Highfield Lane shown on sheet 2 of the rights of way and access plans.
Sevington, Mersham	A2070 Bad Munstereifel Road (southbound)	From a point 220 metres south of the M20 Junction 10 circulatory carriageway to a point 68 metres north of the junction with Church Road, a distance of 550 metres, shown on sheet 3 of the rights of way and access plans.	References K, L and M Re-aligned A2070 Bad Munstereifel Road and new A2070 roundabout circulatory carriageway shown on sheet 3 of the rights of way and access plans.
Sevington	A2070 Bad Munstereifel Road (northbound)	From a point 220 metres south of the M20 Junction 10 circulatory carriageway to a point 68 metres north of the junction with Church Road, a distance of 550 metres, shown on sheet 3 of the rights of way and access plans.	References K, L and M Re-aligned A2070 Bad Munstereifel Road and new A2070 roundabout circulatory carriageway shown on sheet 3 of the rights of way and access plans.
Sevington	Church Lane overbridge	From point H to point G on sheet 3 of the rights of way and access plans.	Reference R A length of new cycle track (with a right of way on foot) to be known as the

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(1) Area	(2) Highway to be stopped up	(3) Extent of stopping up	(4) New highway to be substituted/provided
			new Church Road footbridge shown on sheet 3 of the rights of way and access plans.
Sevington, Mersham			Reference A M20 Junction 10a eastbound off slip shown on sheet 1 of the rights of way and access plans.
Sevington, Mersham			Reference B M20 Junction 10a westbound on slip shown on sheets 1 and 3 of the rights of way and access plans.
Sevington, Mersham			Reference G New M20 Junction 10a circulatory carriageway shown on sheets 2 and 3 of the rights of way and access plans.
Mersham			Reference H A length of new cycle track (with a right of way on foot) to be known as the new Kingsford Street footbridge shown on sheet 2 of the rights of way and access plans.
Sevington, Mersham			Reference J In the event of construction of the A2070 Option A only, a new length of highway from the M20 Junction 10a circulatory carriageway to the new

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(1) Area	(2) Highway to be stopped up	(3) Extent of stopping up	(4) New highway to be substituted/provided
			A2070 roundabout shown on the rights of way and access plans sheets 2 and 3.
Sevington			Reference N In the event of construction of the A2070 Option B only, a new length of highway from the M20 Junction 10a circulatory carriageway to the new Stour Park roundabout circulatory carriageway, shown on sheet 4 of the rights of way and access plans.
Sevington, Mersham			Reference O In the event of construction of the A2070 Option B only, a new Stour Park roundabout circulatory carriageway, shown on sheet 4 of the rights of way and access plans.
Sevington, Mersham			Reference P In the event of construction of the A2070 Option B only, a new length of highway from the new Stour Park roundabout circulatory carriageway to the new A2070 roundabout circulatory carriageway, shown on sheet 4 of the rights of way and access plans.

PART 3 E+W+S

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED

Commencement Information

I32 Sch. 4 Pt. 3 in force at 22.12.2017, see [art. 1](#)

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private means of access to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New private means of access to be substituted or provided</i>
Mersham			Reference 1 A new private access to pond 3 from a point on the A20 Hythe Road, 60 metres north-west of the merge with the M20 Junction 10A circulatory carriageway, to where it meets pond 3, a distance of 75 metres, as shown on sheets 1 and 2 of the public rights of way and access plans.
Mersham	Reference c Access to field north of the A20 Hythe Road	At a point 60 metres north west of the junction with Highfield Lane as shown on sheet 2 of the rights of way and access plans.	Reference 2 A new private access to field north of the A20 Hythe Road 95 metres from the junction with Highfield Lane as shown on sheet 2 of the rights of way and access plans.
Sevington	Reference f Access to field north of the Old Mill Stream and south of the M20 main carriageway	A length from its junction with the local road that joins Church Road, just north of the Church Road footbridge, to a point 45 metres south of the Old Mill Stream, a distance of 278 metres, as shown on sheet 3 of	Reference 3 A new private access to pond 2 and field north of the Old Mill Stream, from a point on the southbound carriageway of the

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(1) <i>Area</i>	(2) <i>Private means of access to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>New private means of access to be substituted or provided</i>
		the rights of way and access plans.	A2070, 88 metres north of the A2070 roundabout, to the Old Mill Stream, a distance of 153 metres, as shown on the rights of way and access plans sheet 3.
Sevington			Reference 4 A new private access to pond 1 from a point on the eastbound carriageway of the new A2070 link road, 370 metres west of the new M20 Junction 10a circulatory carriageway, to where it meets pond 1, a distance of 150 metres, as shown on the rights of way and access plans sheet 3.

PART 4 **E+W+S**

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

Commencement Information

I33 Sch. 4 Pt. 4 in force at 22.12.2017, see [art. 1](#)

(1) <i>Area</i>	(2) <i>Private means of access to be stopped up</i>	(3) <i>Extent of stopping up</i>
Mersham	Reference a Access to Sweatman Mowers from the A20 Hythe Road	At a point 200 metres north-west of the junction with Highfield Lane as shown on sheet 1 of the rights of way and access plans.

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(1) <i>Area</i>	(2) <i>Private means of access to be stopped up</i>	(3) <i>Extent of stopping up</i>
Mersham	Reference b Access to the Wyevale Garden Centre from the A20 Hythe Road	At a point 110 metres north-west of the junction with Highfield Lane as shown on sheets 1 and 2 of the rights of way and access plans.
Mersham	Reference d Access to field north of the A20 Hythe Road	At a point 140 metres south east of the junction with Highfield Lane as shown on sheet 2 of the rights of way and access plans.
Sevington	Reference e Access to field from Kingsford Street	At a point 310 metres south east of the junction with Highfield Lane as shown on sheet 2 of the rights of way and access plans.

SCHEDULE 5 **E+W+S**

Article 24

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Commencement Information

I34 Sch. 5 in force at 22.12.2017, see [art. 1](#)

(1) <i>Plot reference number shown on land plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>	(3) <i>Relevant part of the authorised development</i>
Land Plans – Sheet 2		
2/3/a	New right to install, operate and maintain lighting columns and cables including access with or without vehicles plant and machinery.	Work No. 16
2/4/b	New right to construct, divert, remove, use and maintain utility connections and equipment including a mains gas pipeline including access with or without vehicles plant and machinery. New right to construct and maintain noise bund No.1.	Work No. 22
Land Plans – Sheet 3		
3/14/a	New right to construct, operate and maintain the Church Road overbridge and related works and mitigation measures including access with or without vehicles plant and machinery.	Work No. 8

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(1) <i>Plot reference number shown on land plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>	(3) <i>Relevant part of the authorised development</i>
3/16/d	New right to construct, divert, remove, use and maintain utility connections and equipment including a mains gas pipeline including access with or without vehicles plant and machinery.	Work No. 22
3/16/g	New right to construct, divert, remove, use and maintain utility connections and equipment including a mains gas pipeline including access with or without vehicles plant and machinery.	Work No. 22
Land Plans – Sheet 4		
4/1/d	New right to construct, use and maintain environmental mitigation measures including access with or without vehicles plant and machinery.	Work Nos. 1-29
4/16/a	New right to construct, use and maintain environmental mitigation measures including access with or without vehicles plant and machinery.	Work Nos. 1-29
4/16/b	New right to construct, use and maintain environmental mitigation measures including access with or without vehicles plant and machinery.	Work Nos. 1-29

SCHEDULE 6 **E+W+S**

Article 24

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

Compensation enactments

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

Commencement Information

I35 Sch. 6 para. 1 in force at 22.12.2017, see [art. 1](#)

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) date of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to the M20 Junction 10a Development Consent Order 2017 (“the 2017 Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the 2017 Order) to acquire an interest in the land; and
- (c) the acquiring authority enter on and take possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

Commencement Information

I36 Sch. 6 para. 2 in force at 22.12.2017, see [art. 1](#)

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(5) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

Commencement Information

I37 Sch. 6 para. 3 in force at 22.12.2017, see [art. 1](#)

Application of Part 1 of the 1965 Act

4. Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 27 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 21 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 24(1) (compulsory acquisition of rights)—

- (a) with the modification specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

(5) 1973 c. 26.

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Commencement Information

I38 Sch. 6 para. 4 in force at 22.12.2017, see [art. 1](#)

5.—(1) The modification referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

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

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

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

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

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

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

(5) Section 11(6) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 21), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(7) (powers of entry: further notices of entry), 11B(8) (counter-notice requiring possession to be taken on specified date, 12(9) (unauthorised entry) and 13(10) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(11) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference

(6) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(7) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(8) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).

(9) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(10) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(11) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act is modified by article 27(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A **E+W+S**

COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 28 (application of the 1981 Act) of the M20 Junction 10a Development Consent Order 2017 in respect of the land to which the notice to treat relates.

(2) But see article 29(3) (acquisition of subsoil or airspace only) of the M20 Junction 10a Development Consent Order 2017 which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

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Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making the determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

15. Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

Commencement Information

I39 Sch. 6 para. 5 in force at 22.12.2017, see [art. 1](#)

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Commencement Information

I40 Sch. 7 in force at 22.12.2017, see [art. 1](#)

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<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Plot Reference Number shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Land Plans - Sheet 1			
Ashford	1/1/a	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Ashford	1/1/b	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Land Plans - Sheet 2			
Ashford	2/1/c	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Ashford	2/1/d	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Ashford	2/1/e	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Ashford	2/1/g	The strengthening of the existing Swatfield Bridge on the A20 Hythe Road. Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment, water pipeline and power cables.	Work Nos. 11, 16, 24, 25, 26, 27 and 28
Ashford	2/2/a	Use as a site compound area.	Work Nos. 1-29
Ashford	2/5/a	Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment and water pipeline.	Work Nos. 16, 24, 25
Ashford	2/5/aa	Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment and water pipeline.	Work Nos. 16, 24 and 25
Ashford	2/6/a	Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment and water pipeline.	Work Nos. 16, 24, 25
Ashford	2/6/aa	Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment and water pipeline.	Work Nos. 16, 24 and 25
Ashford	2/8/aa	Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment, water pipeline and power cables.	Work Nos. 16, 24, 25, 26, 27 and 28
Land Plans – Sheet 3			

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(1) <i>Location</i>	(2) <i>Plot Reference Number shown on land plans</i>	(3) <i>Purpose for which temporary possession may be taken</i>	(4) <i>Relevant part of the authorised development</i>
Ashford	3/14/c	Traffic sign amendments.	Work No. 9
Ashford	3/16/c	Use as a site compound area.	Work Nos. 1-29
Land Plans – Sheet 4			
Mersham	4/1/b	Realignment of the A20 Hythe Road. Diversion works to telecoms equipment, water pipeline and power cables.	Work Nos. 17, 25, 26, 27 and 28
Mersham	4/1/bb	Re-alignment of the A20 Hythe Road.	Work No. 17
Mersham	4/1/g	Alteration work to the existing Kingsford Street. Diversion works to telecoms equipment and power cables.	Work Nos. 5, 24 and 28
Mersham	4/1/h	Alteration work to the existing A20 and installation of new traffic signs.	Work No. 17

SCHEDULE 8 **E+W+S**

Article 39

TREES SUBJECT TO TREE PRESERVATION ORDERS

Commencement Information

141 Sch. 8 in force at 22.12.2017, see [art. 1](#)

(1) <i>Type of tree</i>	(2) <i>Work to be carried out</i>	(3) <i>Relevant part of the authorised development</i>
TPO No. 15 1997 (Ashford Borough Council) TPO group containing field maple (<i>Acer campestre</i>), hazel (<i>Corylus avellana</i>) and Italian alder (<i>Alnus cordata</i>).	Tree group to be removed to enable works	Work Nos. 9, 20
TPO No. 22 1998 (Ashford Borough Council) Woodland area, alder (<i>Alnus glutinosa</i>), sycamore (<i>Acer pseudoplatanus</i>), ash (<i>Fraxinus excelsior</i>) with occasional mature willow (<i>Salix</i> spp.), poplar (<i>Populus</i>	Localised disturbance to tree roots or removal of individual trees adjacent to the Swatfield Bridge, to enable strengthening and level adjustment works to be carried out.	Work Nos. 11, 16

(1) <i>Type of tree</i>	(2) <i>Work to be carried out</i>	(3) <i>Relevant part of the authorised development</i>
tremula). Elder (Sambuca) understory. Corner bordering Pilgrims' Hospice is subject to a TPO.		

SCHEDULE 9 **E+W+S**

Article 43

PROTECTIVE PROVISIONS

PART 1 **E+W+S**

FOR THE PROTECTION OF ELECTRICITY,
GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

Commencement Information

I42 Sch. 9 para. 1 in force at 22.12.2017, see [art. 1](#)

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(12), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(13) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(14); and

(12) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).

(13) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by sections 3(2) and 76 of, and paragraphs 1 and 4 of Schedule 6, and Schedule 8 to the Utilities Act 2000 (c. 27), sections 149(1) and (5) and 197(9) of, and part 1 of Schedule 23 to, the Energy Act 2004 (c. 20) and S.I. 2011/2704.

(14) 1991 c. 56.

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- (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at future date) of that Act⁽¹⁵⁾,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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

Commencement Information

I43 Sch. 9 para. 2 in force at 22.12.2017, see [art. 1](#)

On street apparatus **E+W+S**

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

Commencement Information

I44 Sch. 9 para. 3 in force at 22.12.2017, see [art. 1](#)

Apparatus in stopped up streets **E+W+S**

4.—(1) Where any street is stopped up under article 15 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph

⁽¹⁵⁾ Section 102(4) was amended by section 96(1)(1)(c) of the Water Act 2003 (c. 37). Section 104 was amended by sections 96(4) and 101(2) of, and part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29).

affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 14 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Commencement Information

I45 Sch. 9 para. 4 in force at 22.12.2017, see [art. 1](#)

Protective works to buildings **E+W+S**

5. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Commencement Information

I46 Sch. 9 para. 5 in force at 22.12.2017, see [art. 1](#)

Acquisition of land **E+W+S**

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

Commencement Information

I47 Sch. 9 para. 6 in force at 22.12.2017, see [art. 1](#)

Removal of apparatus **E+W+S**

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as

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are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Commencement Information

I48 Sch. 9 para. 7 in force at 22.12.2017, see [art. 1](#)

Facilities and rights for alternative apparatus **E+W+S**

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Commencement Information

I49 Sch. 9 para. 8 in force at 22.12.2017, see [art. 1](#)

Retained apparatus **E+W+S**

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

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) are to be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

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

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

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

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

Commencement Information

I50 Sch. 9 para. 9 in force at 22.12.2017, see [art. 1](#)

Expenses and costs **E+W+S**

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

Commencement Information

I51 Sch. 9 para. 10 in force at 22.12.2017, see [art. 1](#)

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2) any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

Commencement Information

I52 Sch. 9 para. 11 in force at 22.12.2017, see [art. 1](#)

Commencement Information

I51 Sch. 9 para. 10 in force at 22.12.2017, see [art. 1](#)

I52 Sch. 9 para. 11 in force at 22.12.2017, see [art. 1](#)

Cooperation **E+W+S**

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

Commencement Information

I53 Sch. 9 para. 12 in force at 22.12.2017, see [art. 1](#)

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

Commencement Information

I54 Sch. 9 para. 13 in force at 22.12.2017, see [art. 1](#)

Commencement Information

I53 Sch. 9 para. 12 in force at 22.12.2017, see [art. 1](#)

I54 Sch. 9 para. 13 in force at 22.12.2017, see [art. 1](#)

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PART 2 **E+W+S**

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

Commencement Information

I55 Sch. 9 para. 14 in force at 22.12.2017, see [art. 1](#)

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(**16**);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A)(**17**) (interpretation of code) of that code;

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

“the electronic communications code” has the same meaning as in Chapter 1 (electronic communications, networks and services) of Part 2 of the 2003 Act(**18**);

“electronic communications code network” means—

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

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

Commencement Information

I56 Sch. 9 para. 15 in force at 22.12.2017, see [art. 1](#)

16. The exercise of the powers conferred by article 33 (statutory undertakers) is subject to paragraph 23 of Schedule 2 (undertaker’s works) to the Telecommunication Act 1984(**19**).

Commencement Information

I57 Sch. 9 para. 16 in force at 22.12.2017, see [art. 1](#)

(16) 2003 c. 21.

(17) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003.

(18) See section 106 of the 2003 Act.

(19) 1984 c. 12. Paragraph 23 was amended by section 190 of, and paragraph 68 of schedule 25 and part 1 of schedule 27 to, the Water Act 1989 (c. 15), section 112(4) of, and schedule 18 to, the Electricity Act 1989 (c. 29) and section 106(2) of, and paragraphs 1, 5(d) and 8 of schedule 3 to, the Communications Act 2003.

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

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 46 (arbitration).

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

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

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

Commencement Information

158 Sch. 9 para. 17 in force at 22.12.2017, see [art. 1](#)

PART 3 **E+W+S**

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

18. The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

Commencement Information

159 Sch. 9 para. 18 in force at 22.12.2017, see [art. 1](#)

19. In this Part of this Schedule—

“the Agency” means the Environment Agency;

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“construction” includes placing, altering, replacing, relaying, removing and excavation and “construct” and “constructed” are to be construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence or tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

“plans” includes sections, drawings, specifications calculations and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery;
- (d) affect the conservation, distribution or use of water resources; or
- (e) affect the conservation value of the main river and habitats in its immediate vicinity;

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

Commencement Information

I60 Sch. 9 para. 19 in force at 22.12.2017, see [art. 1](#)

20.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 29.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work, fishery or water resources or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) Any requirement made by the Agency under sub-paragraph (3)(c) may include—

- (a) a requirement for the undertaker to carry out monitoring during the implementation of any de-watering scheme approved by the Agency under this paragraph and to supply data arising from that monitoring to the Agency; and
 - (b) a requirement for the undertaker not to prevent or materially restrict the Agency's use of any access route during construction of the specified work or, where that is not possible owing to the nature of the work, a requirement for the undertaker to provide for use by the Agency during construction of the specified work a reasonably suitable alternative to the access route.
- (5) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

Commencement Information

I61 Sch. 9 para. 20 in force at 22.12.2017, see [art. 1](#)

21. Without limitation on the scope of paragraph 20, but subject always to the provisions of that paragraph as to reasonableness, the requirements which the Agency may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Commencement Information

I62 Sch. 9 para. 21 in force at 22.12.2017, see [art. 1](#)

22.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 21, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

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(5) Subject to sub-paragraph (6) if, within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not except in the case of an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 29.

Commencement Information

I63 Sch. 9 para. 22 in force at 22.12.2017, see [art. 1](#)

23.—(1) Subject to sub-paragraph (6), the undertaker must from the commencement of the construction of a specified work until the date falling 12 months from the date of completion of such specified work (“the maintenance period”), maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence. Upon the expiry of the maintenance period, the drainage work must be maintained by the highway authority of the highway to which the specified work relates.

(2) If any such drainage work is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the person liable for maintenance to repair and restore the work, or any part of such work, or (if the person liable for maintenance so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5), if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the person liable for maintenance, that person has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from that person.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part of them until it has obtained the consent or complied with the condition unless the cessation of the specified works or part of them would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not except in the case of an emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 29.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of this Order from doing so; and

- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

Commencement Information

I64 Sch. 9 para. 23 in force at 22.12.2017, see [art. 1](#)

24. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure reasonably incurred by the Agency in doing so from the undertaker.

Commencement Information

I65 Sch. 9 para. 24 in force at 22.12.2017, see [art. 1](#)

25. If by reason of construction of a specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to access the flood defence or equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

Commencement Information

I66 Sch. 9 para. 25 in force at 22.12.2017, see [art. 1](#)

26.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in a fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to a fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are required under sub-paragraph (2), the Agency may take those steps and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from the undertaker.

Commencement Information

I67 Sch. 9 para. 26 in force at 22.12.2017, see [art. 1](#)

27.—(1) The undertaker must repay to the Agency all costs, charges, expenses, damages and losses not otherwise provided for in this Part of this Schedule which may be reasonably incurred or suffered by the Agency by reason of—

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- (a) the examination or approval of plans under this Part of this Schedule;
 - (b) the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule;
 - (c) the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works; or
 - (d) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.
- (2) The fact that any act or thing may have been done—
- (a) by the Agency on behalf of the undertaker; or
 - (b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Agency, or in a manner approved by the Agency, or under its supervision or the supervision of its duly authorised representative,

does not excuse the undertaker from liability under the provisions of this paragraph.

(3) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any costs, charges, expenses, damages or losses to the extent that they are attributable to the act, neglect or default of the Agency, its officers, servants, contractors or agents.

(4) The Agency must give the undertaker written notice of any such claim or demand as is referred to in sub-paragraph (1) as soon as it becomes aware of such claim or demand, and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker, such consent not to be unreasonably conditioned, withheld or delayed.

Commencement Information

I68 Sch. 9 para. 27 in force at 22.12.2017, see [art. 1](#)

28. If following construction of the authorised development the Agency's access to the Aylesford Stream is materially obstructed or any pre-existing rights of access to the Aylesford Stream over the Order land are extinguished, the undertaker must provide such alternative means of access and grant such rights over the Order land as will allow the Agency to access the Aylesford Stream no less effectively than was possible before the obstruction or extinguishment of rights.

Commencement Information

I69 Sch. 9 para. 28 in force at 22.12.2017, see [art. 1](#)

29. Any dispute arising between the undertaker and the Agency under this Part of this Schedule is to be determined by arbitration under article 46 (Arbitration).

Commencement Information

I70 Sch. 9 para. 29 in force at 22.12.2017, see [art. 1](#)

SCHEDULE 10 **E+W+S**

Article 44

ENVIRONMENTAL STATEMENT DOCUMENTS TO BE CERTIFIED

Commencement Information

I71 Sch. 10 in force at 22.12.2017, see [art. 1](#)

Document and description

<p>the environmental statement contained in document reference 6.1</p> <p>the figures accompanying the environmental statement contained in document reference 6.2 (subject to the substitutions set out below)</p> <p>the appendices accompanying the environmental statement contained in document reference 6.3 (subject to the substitutions set out below)</p> <p>the statement of statutory nuisances contained in document reference 6.4</p> <p>the non-technical summary contained in document 6.5</p> <p>the assessment of implications for European sites contained in document 6.6</p> <p>the revised arboricultural implications assessment contained in document 341755-09-300-RE-003-A Revision D (which substitutes the arboricultural implications assessment contained in appendix 7.3 in document reference 6.3)</p> <p>the revised figure 2.1 the main scheme contained in document HA514442-MMGJV-GEN-SMW-DE-Z-60201 Revision B (which substitutes figure 2.1 the main scheme contained in document reference 6.2)</p> <p>the revised outline construction environmental management plan contained in document HA514442-MMGJV-GEN-SMW-RE-Z-631701 Revision B (which substitutes the outline construction environmental management plan contained in appendix 17.1 in document reference 6.3)</p> <p>the revised flood risk assessment contained in document HA514442-MMGJV-GEN-SMW-RE-Z-631402 Revision B (which substitutes the flood risk assessment contained in appendix 14.2 in document reference 6.3)</p> <p>the flood risk assessment summary contained in document HA514442-MMGJV-GEN-SMW-RE-Z-14401 Revision A</p> <p>the flood risk assessment – depth and hazard mapping contained in document HA514442-MMGJV-GEN-SMW-RE-Z-15401 Revision A</p> <p>the FRA – additional submission at deadline 8 contained in document HA514442-MMGJV-GEN-SMW-RE-Z-15501 Revision A</p> <p>the environmental update report contained in document HA514442-MMGJV-GEN-SMW-RE-Z-101301</p>

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Document and description
the arboricultural survey report contained document 341755-09-300-RE-02-E Revision E
the geophysical survey report contained in document J2780
the site location and overview of survey areas contained in document 2780 figure no. 01
the site plan showing location of survey grids and referencing contained in document 2780 figure no. 02
the plot of raw gradiometer data contained in document 2780 figure no. 03
the colour plot of raw gradiometer data showing extreme magnetic values contained in document 2780 figure no. 04
the plot of processed gradiometer data contained in document 2780 figure no. 05
the interpretation of gradiometer anomalies contained in document 2780 figure no. 06
the archaeological walkover survey, metal detecting and evaluation trenching report contained in document 86670.02
the site investigation report contained in document 15/2718 – FR 01
the minerals safeguarding assessment contained in document HWY/HDS/341755/TR010006
the environmental masterplan for the main scheme contained in documents HA514442-MMGJV-GEN-SMW-DE-Z-60213 Revision E, HA514442-MMGJV-GEN-SMW-DE-Z-60214 Revision E, HA514442-MMGJV-GEN-SMW-DE-Z-60215 Revision C, HA514442-MMGJV-GEN-SMW-DE-Z-60216 Revision B, HA514442-MMGJV-GEN-SMW-DE-Z-60217 Revision B, HA514442-MMGJV-GEN-SMW-DE-Z-60218 Revision B and HA514442-MMGJV-GEN-SMW-DE-Z-60219 Revision D, all stated as Revision C at 26 May 2017 (which substitutes the environmental masterplan for the main scheme contained in figures 2.6a, 2.6b, 2.6c, 2.6d, 2.6e, 2.6f and 2.6g of document reference 6.2)
the environmental masterplan for the alternative scheme contained in documents HA514442-MMGJV-GEN-SMW-DE-Z-60220 Revision E, HA514442-MMGJV-GEN-SMW-DE-Z-60221 Revision E and HA514442-MMGJV-GEN-SMW-DE-Z-60222 Revision B, all stated as Revision C at 26 May 2017 (which substitutes figures 2.7a, 2.7b and 2.7c in the environmental masterplan for the alternative scheme contained in figures 2.7a, 2.7b, 2.7c, 2.7d, 2.7e, 2.7f and 2.7g of document reference 6.2)
the environmental masterplan update report for deadline 8 contained in document HA514442-MMGJV-GEN-SMW-RE-Z-13501 Revision A, stated as Revision C at 26 May 2017
the archaeological intrusive evaluation, written scheme of investigation contained in document HA514442-MMGJV-GEN-SMW-RE-Z-13901 Revision D
the traffic management plan draft contained in document HE514443-TW-TTM-00-RP-ZM-0001 Version 01

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Changes and effects yet to be applied to :

- Sch. 2 para. 3(2)(e) word substituted by [S.I. 2019/1271 art. 2\(2\)\(a\)\(ii\)](#)
- Sch. 2 para. 3(2)(e) word substituted by [S.I. 2019/1271 art. 2\(2\)\(a\)\(iii\)](#)
- Sch. 2 para. 3(2)(e) words inserted by [S.I. 2019/1271 art. 2\(2\)\(a\)\(i\)](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 2 para. 3(2)(ea) inserted by [S.I. 2019/1271 art. 2\(2\)\(b\)](#)
- Sch. 2 para. 3(6) inserted by [S.I. 2019/1271 art. 2\(3\)](#)