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STATUTORY INSTRUMENTS

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**2019 No. 1358**

**The Northampton Gateway Rail Freight Interchange Order 2019**

**PART 1 E+W+S**

**PRELIMINARY**

**Citation and Commencement E+W+S**

1. This Order may be cited as the Northampton Gateway Rail Freight Interchange Order 2019 and comes into force on 30th October 2019.

**Commencement Information**

**II** Art. 1 in force at 30.10.2019, see [art. 1](#)

**Interpretation E+W+S**

2.—(1) In this Order—

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

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

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

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

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

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

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

“the 1996 Regulations” means the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996(8);

“the 2008 Act” means the Planning Act 2008(9);

“the 2010 Regulations” means the Community Infrastructure Levy Regulations 2010(10);

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(1) 1961 c. 33.

(2) 1965 c. 56.

(3) 1980 c. 66.

(4) 1981 c. 66.

(5) 1984 c. 27.

(6) 1990 c. 8.

(7) 1991 c. 22.

(8) S.I. 1996/428, as amended by S.I. 1998/1701.

(9) 2008 c. 29.

(10) S.I. 2010/948 as amended by S.I. 2011/987, S.I. 2012/635, S.I. 2012/666, S.I. 2012/702, S.I. 2012/2975, S.I. 2013/982, S.I. 2014/385, S.I. 2015/377, S.I. 2015/664, S.I. 2015/836, S.I. 2018/172, S.I. 2019/966 and S.I. 2019/1103.

“the 2017 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017<sup>(11)</sup>;

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

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

“apparatus” for the purposes of article 8 (street works) and article 36 (apparatus and rights of statutory undertakers in stopped up streets) has the same meaning as in Part 3 of the 1991 Act;

“arboricultural assessment” means the arboricultural assessment contained in appendix 4.3 of the environmental statement;

“authorised activity” means for the purpose of article 27 (power to override easements and other rights)—

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

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

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

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

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

“bus” has the same meaning as in Schedule 1 of the Traffic Signs Regulations and General Directions 2016<sup>(12)</sup>;

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

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

“commence”, or “commencement”, means the carrying out of a material operation, as defined in section 155 (when development begins) of the 2008 Act, as part of the authorised development unless the context indicates otherwise;

“construction and environmental management plan” means the document of that description contained in appendix 2.1 of the environmental statement;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act<sup>(13)</sup>;

“development consent obligation” means the development consent obligation entered into by agreement under section 106 (planning obligations) of the 1990 Act<sup>(14)</sup> dated 28th March 2019 in respect of the authorised development and any subsequent amendment to the obligation;

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<sup>(11)</sup> S.I. 2017/572, amended by S.I. 2017/1012, S.I. 2018/695, S.I. 2018/834 and S.I. 2018/1232.

<sup>(12)</sup> S.I. 2016/362. There are amendments to the Regulations which are not relevant to this Order.

<sup>(13)</sup> The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

<sup>(14)</sup> Section 106 was substituted by section 12(1) of the Planning and Compensation Act 1991 (c. 34) and was subsequently amended by section 33 of the Greater London Authority Act 2007 (c. 24), section 174 of the Planning Act 2008 (c. 29) and paragraphs 1 and 3 of Schedule 2 to the Growth and Infrastructure Act 2013 (c. 27).

“electronic communications code” has the same meaning as in section 106(1) (application of the electronic communications code) of the Communications Act 2003<sup>(15)</sup>;

“electronic communications code network” means—

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

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

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

“framework travel plan” means the document of that description referred to in requirement 4 (sustainable transport) and attached at appendix 1 to the transport assessment;

“hedgerow” includes hedgerows to which the Hedgerow Regulations 1997<sup>(16)</sup> apply;

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

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

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

“Highways England” means Highways England Company Limited (company number 09346363), whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4ZZ, appointed as highway authority for the highways specified in article 2 (appointment of a Strategic Highways Company) of the appointment of a Strategic Highways Company Order 2015<sup>(17)</sup> or any successor in function;

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

“highway works” means the works comprised in Works Nos. 7, 8, 9, 11, 12, 13, 14, 15, 16 and 17;

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

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

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

“local highway authority” means Northamptonshire County Council or any successor in function as local highway authority;

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

“main site” means that part of the land within the Order limits comprising the areas of land described on the works plans as Works Nos. 1, 2, 3, 4, 5 and 6;

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<sup>(15)</sup> 2003 c. 21. Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

<sup>(16)</sup> S.I. 1997/1160. There are amendments to the Regulations which are not relevant to this Order.

<sup>(17)</sup> S.I. 2015/376.

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

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

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981<sup>(18)</sup>;

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

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

“public transport strategy” means the document of that description referred to in requirement 4 and attached at appendix 2 to the transport assessment;

[<sup>F1</sup>“rail infrastructure plan” means the plan of that description referred to in Schedule 16 and certified as the rail infrastructure plan by the Secretary of State for the purposes of this Order;]

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

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

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

“relevant planning authority” means as regards the operation and enforcement of any part of this Order the district planning authority within whose administrative boundary that part of the authorised development relevant to the operation or enforcement of the provision in question is situated;

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

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

“relocation works” means works executed, or apparatus provided, under paragraph (2) of article 36;

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

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

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

“statutory utility” means a statutory undertaker for the purposes of the 1990 Act or a public communications provider as defined in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003<sup>(19)</sup>;

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

“street” means a street within the meaning of section 48<sup>(20)</sup> (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

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(18) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 but none are relevant to this Order.

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

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

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

“traffic authority” has the meaning as in section 121A(21) (traffic authorities) of the 1984 Act;

“traffic officer” means a person designated under section 2 (designation of Traffic Officers) of the Traffic Management Act 2004(22);

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

“transport assessment” means the document of that description contained within appendix 12.1 of the environmental statement;

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

“tree preservation order” has the meaning given in section 198(23) (tree preservation orders) of the 1990 Act;

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

- (a) section 10 (general provision as to trunk roads) or 19(1) (certain special roads and other highways to become trunk roads) of the 1980 Act(24); or
- (b) an order or direction under section 10 of that Act; or
- (c) this Order; or
- (d) any other enactment;

“the undertaker” means—

- (a) Roxhill (Junction 15) Limited (company number 08763104) whose registered office is at Lumonics House, Valley Drive, Swift Valley, Rugby, Warwickshire, CV21 1TQ; and
- (b) in respect of the main site only, any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act for such time as that section applies to that person;

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

“water authority” means AWG Group Limited (company number 02366618) registered at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire, PE29 6XU and any successor in function;

“warehousing” means the warehousing constructed as part of the authorised development;

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

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

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

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

(22) 2004 c. 18.

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

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

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

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

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

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

#### Textual Amendments

- F1** Words in [art. 2\(1\)](#) inserted (7.4.2023) by [The Northampton Gateway Rail Freight Interchange \(Amendment\) Order 2023 \(S.I. 2023/418\)](#), arts. 1, [2\(2\)](#)

#### Commencement Information

- I2** Art. 2 in force at 30.10.2019, see [art. 1](#)

## PART 2 **E+W+S**

### PRINCIPAL POWERS

#### Development consent granted by the Order **E+W+S**

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

#### Commencement Information

- I3** Art. 3 in force at 30.10.2019, see [art. 1](#)

#### Parameters of authorised development **E+W+S**

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

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) in respect of the highway works deviate vertically from the levels shown on the highway plans to a maximum of 1.5 metres upwards or downwards; and
- (c) in respect of the railway works comprised in Works Nos. 1 and 2 deviate vertically from the levels shown on the railway plans to a maximum of 1.5 metres upwards or downwards.

(2) The maximum limits described in paragraph (1)(a) to (c) do not apply to constrain the authorised development when it is demonstrated by the undertaker, on application, to the relevant planning authority's satisfaction, and the relevant planning authority certifies accordingly, that a deviation in excess of these limits would not be likely to give rise to any materially new or materially

different significant effects on the environment that have not been assessed in the environmental statement.

**Commencement Information**

**I4** Art. 4 in force at 30.10.2019, see [art. 1](#)

**Authorisation of use** **E+W+S**

**5.** Subject to the provisions of this Order and to the requirements, the undertaker and any persons authorised by the undertaker may operate and use that part of the authorised development comprised in Works Nos. 1 to 6 for the purposes of a rail freight terminal and warehousing, any purposes for which such parts of the authorised development is designed and for any purposes ancillary to those purposes.

**Commencement Information**

**I5** Art. 5 in force at 30.10.2019, see [art. 1](#)

**Maintenance of authorised development** **E+W+S**

**6.—(1)** The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) Paragraph (1) does not apply to the highway works the maintenance of which is governed by article 14 (maintenance of highway works) and Parts 2 and 3 of Schedule 13 (protective provisions).

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

**Commencement Information**

**I6** Art. 6 in force at 30.10.2019, see [art. 1](#)

**Benefit of Order** **E+W+S**

**7.—(1)** Subject to paragraphs (2), (3) and (4) the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Roxhill (Junction 15) Limited, has the sole benefit of the provisions of Part 5 (powers of acquisition) unless the Secretary of State consents to the transfer of the benefit of those provisions.

(3) Roxhill (Junction 15) Limited has the sole benefit of the powers conferred by this Order to carry out the highway works in accordance with the provisions of Parts 2 and 3 of Schedule 13 (protective provisions) unless—

- (a) the Secretary of State consents to the transfer of the benefit of those provisions; or
- (b) the provisions of paragraph 4(6) of Part 2 or paragraph 4(6) of Part 3 of Schedule 13 apply in which case the relevant highway authority will have the benefit of the powers to carry out the relevant highway works.

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

#### Commencement Information

**I7** Art. 7 in force at 30.10.2019, see [art. 1](#)

## PART 3 **E+W+S**

### STREETS

#### Street works **E+W+S**

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

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

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act and is subject to the provisions of Parts 2 and 3 of Schedule 13.

#### Commencement Information

**I8** Art. 8 in force at 30.10.2019, see [art. 1](#)

#### Power to alter layout, etc., of streets **E+W+S**

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

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of such kerb, footway, cycle track or verge;



- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain crossovers and passing places.

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

**Commencement Information**

**I9** Art. 9 in force at 30.10.2019, see [art. 1](#)

**Permanent stopping up of streets** **E+W+S**

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

(2) No street specified in column (2) of Schedule 4 is to be wholly or partly stopped up under this article unless—

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

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

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the street as is bounded on both sides by land owned by the undertaker.

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

(5) This article is subject to article 36 (apparatus and rights of statutory undertakers in stopped up streets).

**Commencement Information**

**I10** Art. 10 in force at 30.10.2019, see [art. 1](#)

**Temporary stopping up of streets** **E+W+S**

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

- (a) divert the traffic from the street; and

(b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the relevant street authority which may attach reasonable conditions to any consent (including specifying the time period during which the street may be stopped up, altered or diverted) but such consent must not be unreasonably withheld.

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

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

#### Commencement Information

**III** Art. 11 in force at 30.10.2019, see [art. 1](#)

### Public rights of way – creation, substitution and stopping up **E+W+S**

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

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

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

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

(4) The undertaker must in connection with carrying out of the authorised development provide the new public rights of way specified in columns (1) and (2) of Part 3 of Schedule 5 (new public

rights of way to be created) to the extent specified in column (3) of that Part of that Schedule at the stage of the authorised development in column (4) of that Part of that Schedule.

**Commencement Information**

**I12** Art. 12 in force at 30.10.2019, see [art. 1](#)

**Accesses** **E+W+S**

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

(2) The agreement of the relevant highway authority or the relevant street authority as appropriate is not required for the formulation, layout or improvement of a new or existing means of access described in Schedule 1 (authorised development) and carried out in accordance with the relevant provisions of Parts 2 and 3 of Schedule 13 (protective provisions).

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

(4) If Highways England, as the highway authority, upon receiving an application for consent under paragraph (1) fail to notify the undertaker of its decision before the end of 28 days beginning on the date on which the application was made, the undertaker may serve upon Highways England written notice requiring Highways England to give consent or refusal within a further 28 days beginning with the date upon which Highways England received written notice from the undertaker. Subject to paragraph (5), if by the expiry of the further 28 days Highways England has failed to notify the undertaker of its decision, Highways England is deemed to have granted consent.

(5) Any further notice given by the undertaker to Highways England under paragraph (4) must include a written statement that the provisions of paragraph (4) apply to the relevant application.

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

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

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

**Commencement Information**

**I13** Art. 13 in force at 30.10.2019, see [art. 1](#)

## Maintenance of highway works **E+W+S**

14.—(1) The highway works must be completed in accordance with the provisions of Parts 2 and 3 of Schedule 13 (protective provisions).

(2) With effect from the date of the handover certificate referred to in paragraph 7 of Part 2 of Schedule 13 the highway works to which that certificate relates will be maintained by and at the expense of Highways England.

(3) With effect from the date of the final certificate referred to in paragraph 7 of Part 3 of Schedule 13 the highway works to which that certificate relates will be maintained by and at the expense of the local highway authority.

(4) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 6 of Part 2 of Schedule 13 then it is deemed to be dedicated as part of the public highway on the issue of that certificate.

(5) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 6 of Part 3 of Schedule 13 then it is deemed to be dedicated as part of the public highway on the issue of that certificate.

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

### Commencement Information

**I14** Art. 14 in force at 30.10.2019, see [art. 1](#)

## Classification of highways **E+W+S**

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

- (a) classified as set out in column (3) of Part 1 of Schedule 7 for the purpose of any enactment or instrument which refers to highways classified as such; and
- (b) provided for the use of the classes of traffic defined in Schedule 4 (classes of traffic for purposes of special roads) to the 1980 Act as set out in column (4) of Part 1 of Schedule 7.

(2) From the date on which the undertaker notifies the Secretary of State that the new highways described in Part 1 of Schedule 7 have been completed, as evidenced by issue of the provisional certificate in accordance with paragraph 6 of Part 2 and paragraph 6 of Part 3 of Schedule 13 (protective provisions), or are open for through traffic, whichever is the earliest—

- (a) the body set out in column (5) of Part 1 of Schedule 7 is the highway authority for those highways; and
- (b) the new highways identified as special roads in column (3) of Part 1 of Schedule 7 are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads.

(3) From the occurrence of the event set out in column (4) of Part 2 of Schedule 7 (existing highways), the existing highways described in columns (1) and (2) of Part 2 of Schedule 7 are to cease to have the classification and be the responsibility of the relevant highway authority set out in column (3) of Part 2 of Schedule 7 and are to be—

- (a) classified as set out in column (5) of Part 2 of Schedule 7 for the purpose of any enactment or instrument which refers to highways classified as such;
- (b) provided for the use of the classes of traffic defined in Schedule 4 to the 1980 Act as set out in column (6) of Part 2 of Schedule 7; and

- (c) the responsibility of the relevant highway authority set out in column (7) of Part 2 of Schedule 7 subject only to any maintenance obligation imposed on the undertaker in Parts 2 and 3 of Schedule 13,

as if such classification had been made under sections 10(2)(25) and 12(3) of the 1980 Act.

#### Commencement Information

**I15** Art. 15 in force at 30.10.2019, see [art. 1](#)

#### Speed limits **E+W+S**

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

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

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

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

(5) Without limiting the scope of the specific powers conferred by paragraph (4) but subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development, impose a temporary speed limit either at all times or at times, on days or during such periods, and on such highways as may be specified by the undertaker.

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

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

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

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

(8) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(26) when used in accordance with regulation 3(5) of those Regulations.

(25) Section 10(2) was amended by section 22(2)(a) of the New Roads and Street Works Act 1991 (c. 22).

(26) S.I. 2011/935.

### Commencement Information

**I16** Art. 16 in force at 30.10.2019, see [art. 1](#)

### Traffic regulation **E+W+S**

**17.**—(1) The order referred to in column (1) of Part 1 of Schedule 9 (amendments to existing orders) is revoked as set out in column (2) of Schedule 9 upon the event listed in column (3) of Part 1 of Schedule 9 occurring.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development—

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

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

(3) The undertaker is not to exercise the powers in paragraph (3) unless it has—

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

(4) Any prohibition, restriction or other provision made by the undertaker under paragraph (3) is to—

- (a) have effect as if duly made by, as the case may be—
  - (i) the relevant traffic authority as a traffic regulation order under the 1984 Act; or
  - (ii) the local highway authority as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act<sup>(27)</sup>; and
- (b) be deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004.

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

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

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

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

#### Commencement Information

**I17** Art. 17 in force at 30.10.2019, see [art. 1](#)

#### Clearways **E+W+S**

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

(2) Nothing in paragraph (1) applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of the carriageway or verge, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance, improvement, reconstruction or operation of the carriageway or verge;

(iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the carriageway or verge of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A to the Communications Act 2003<sup>(28)</sup>; or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

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

(ii) in the service of a local authority, Highways England, a safety camera partnership or the Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;

(iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991<sup>(29)</sup>; or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000<sup>(30)</sup>; or

(c) in relation to a vehicle waiting when the person in control of it is—

(i) required by law to stop;

(ii) obliged to stop in order to avoid an accident; or

(iii) prevented from proceeding by circumstances outside the person's control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in Part 2 of Schedule 9 for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

<sup>(28)</sup> 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

<sup>(29)</sup> 1991 c. 56.

<sup>(30)</sup> 2000 c. 26.

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

#### Commencement Information

**I18** Art. 18 in force at 30.10.2019, see [art. 1](#)

#### Motor vehicle restrictions **E+W+S**

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

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

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

(3) No person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to proceed in the manner specified in column (2) of Part 4 of Schedule 9 (prohibited movements) at the point specified in column (1) of Part 4 of Schedule 9.

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

#### Commencement Information

**I19** Art. 19 in force at 30.10.2019, see [art. 1](#)



## Agreements with highway authorities **E+W+S**

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

- (a) the construction and/or maintenance of any new highway, including any structure carrying the highway over an existing railway or any railway authorised by this Order;
  - (b) the strengthening, improvement, repair or reconstruction of any highway under the powers conferred by this Order;
  - (c) the maintenance of landscaping within a highway constructed as part of the highway works;
  - (d) the maintenance of highway related assets which fall outside of the extent of highway maintained by a relevant highway authority;
  - (e) any stopping up, alteration or diversion of a highway as part of or to facilitate the authorised development; or
  - (f) the carrying out in the highway of any of the works referred to in article 8 (street works).
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) make provision for the relevant highway authority to carry out any function under this Order which relates to the highway in question;
  - (b) include an agreement between the undertaker and relevant highway authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

### Commencement Information

**I20** Art. 20 in force at 30.10.2019, see [art. 1](#)

## PART 4 **E+W+S**

### SUPPLEMENTAL POWERS

## Discharge of water **E+W+S**

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

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) must be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991<sup>(31)</sup>.

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

<sup>(31)</sup> 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43) and sections 36(2) and 99 of the Water Act 2003 (c. 37) (subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

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

(5) The undertaker must not do work on, over, under or near an ordinary watercourse (within nine metres of the landward toe of the bank), make changes to any structure that helps control water or discharge any water into any watercourse except with the approval of the lead local flood authority; and such approval may be given subject to such terms and conditions as the lead local flood authority may reasonably impose, but must not be unreasonably withheld.

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

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

(8) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016<sup>(32)</sup>.

- (9) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and
  - (b) other expressions excluding watercourse, which are used both in this article and in the Water Resources Act 1991<sup>(33)</sup> have the same meaning as in that Act.

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

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#### Commencement Information

**I21** Art. 21 in force at 30.10.2019, see [art. 1](#)

#### Authority to survey and investigate the land **E+W+S**

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

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

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<sup>(32)</sup> [S.I. 2016/1154](#). There are amendments to regulation 12 which are not relevant to this Order.

<sup>(33)</sup> [1991 c. 57](#).

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

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

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

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

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

but such consent must not be unreasonably withheld.

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

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

**Commencement Information**

**I22** Art. 22 in force at 30.10.2019, see [art. 1](#)

**PART 5 E+W+S**

**POWERS OF ACQUISITION**

**Guarantees in respect of payment of compensation E+W+S**

**23.**—(1) The undertaker must not exercise a power conferred by articles 24 to 27 or [F232] to 35 unless a guarantee or alternative form of security in respect of the liabilities of the undertaker to pay compensation under the power being exercised is first in place.

(2) The form of guarantee or security referred to in paragraph (1), and the amount guaranteed or secured, must be approved by the relevant planning authority; but such approval must not be unreasonably withheld or delayed.

(3) The undertaker must provide the relevant planning authority with such information as the relevant planning authority may reasonably require relating to the interests in the land affected by the exercise of the powers conferred by articles 24 to 27 or 32 to 35 for the relevant planning authority to be able to determine the adequacy of the proposed guarantee or security including—

- (a) the interests affected; and
- (b) the undertaker's assessment, and the basis of the assessment, of the level of compensation.

(4) A guarantee or other security given in accordance with this article that guarantees or secures the undertaker's payment of compensation under this Part is enforceable against the guarantor or provider of security by any person to whom such compensation is properly payable.

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

#### Textual Amendments

**F2** Word in [art. 23\(1\)](#) substituted (7.10.2020) by [The Northampton Gateway Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1670\)](#), arts. 1, **2(2)**

#### Commencement Information

**I23** Art. 23 in force at 30.10.2019, see [art. 1](#)

### Compulsory acquisition of land **E+W+S**

**24.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it or is incidental to it, as described in the book of reference and shown on the land plans.

(2) From the day on which a compulsory acquisition notice under section 134(**34**) (notice of authorisation of compulsory acquisition) of the 2008 Act is served or the day on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, all rights, trusts and incidents to which that land or that part of it which is vested (as the case may be) was previously subject are discharged or suspended, so far as their continuance would be inconsistent with the exercise of the powers under this Order.

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

(4) This article is subject to—

- (a) article 25 (compulsory acquisition of rights);
- (b) article 26 (private rights);
- (c) article 29 (time limit for exercise of authority to acquire land and rights compulsorily); and
- (d) article 34(9) (temporary use of land for carrying out the authorised development).

#### Commencement Information

**I24** Art. 24 in force at 30.10.2019, see [art. 1](#)

### Compulsory acquisition of rights **E+W+S**

**25.**—(1) The undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights listed in Schedule 11 (land in which new rights may be created) and described in the book of reference and shown on the land plans.

(2) From the date on which a compulsory acquisition notice is served pursuant to section 134 (notice of authorisation of compulsory acquisition) of the 2008 Act or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new right is, or rights are, acquired will be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

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**(34)** Section 134 was amended by sections 142(1) to (4) and section 237 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2017/16.

(3) Subject to section 8<sup>(35)</sup> (other provisions as to divided land) of, and Schedule 2A<sup>(36)</sup> (counter-notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 12 (modifications of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 12 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article.

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

#### Commencement Information

**I25** Art. 25 in force at 30.10.2019, see [art. 1](#)

#### Private rights **E+W+S**

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

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1)<sup>(37)</sup> (power of entry) of the 1965 Act,

whichever is the earlier.

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

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights and restrictions over land within the limits of land which may be subject to compulsory acquisition powers shown on the land plans are extinguished on the appropriation of the land or right by the undertaker.

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

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

<sup>(35)</sup> Section 8 was amended by paragraphs 1 and 2 of Schedule 17 to the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

<sup>(36)</sup> Schedule 2A was inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016 (c. 22).

<sup>(37)</sup> Section 11(1) was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of the Housing and Planning Act 2016 (c. 22) and section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No 1).

section 152(38) (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(39) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 32 (statutory undertakers and operators of the electronic communications code network) applies.

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

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the creation or acquisition of rights over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

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

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

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

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

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

(9) References in this article to private rights over land include references to any trusts or incidents to which the land is subject.

#### Commencement Information

**I26** Art. 26 in force at 30.10.2019, see [art. 1](#)

#### Power to override easements and other rights **E+W+S**

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

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the use of the land arising by virtue of a contract.

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

(3) Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking.

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

(39) Section 138 was amended by section 23(4) of the Growth and Infrastructure Act 2013 (c. 27) and, [S.I. 2017/1285](#).

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

(5) In respect of any interference, breach, extinguishment, abrogation or discharge under this article, compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10(40) (further provisions as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
  - (i) the compensation is to be estimated in connection with a purchase under that Act; or
  - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

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

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

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

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

the liability is enforceable against the undertaker.

(9) For the purposes of this article, “statutory undertakers” does not include operators of the electronic communications code network.

**Commencement Information**

I27 Art. 27 in force at 30.10.2019, see [art. 1](#)

**Compulsory acquisition of land – incorporation of the mineral code** **E+W+S**

28. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(41) are incorporated in this Order subject to the following modifications—

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

**Commencement Information**

I28 Art. 28 in force at 30.10.2019, see [art. 1](#)

(40) Section 10 was amended by S.I. 2009/1307.

(41) 1981 c. 67.

### Time limit for exercise of authority to acquire land and rights compulsorily **E+W+S**

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4(42) (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act).

(2) The authority conferred by article 34 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession taken before the end of that period.

#### Commencement Information

**I29** Art. 29 in force at 30.10.2019, see [art. 1](#)

### Modification of Part 1 of the 1965 Act **E+W+S**

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

(2) In section 4A(1)(43) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118(44) of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 29 (time limit for exercise of authority to acquire land and rights compulsorily) of the Northampton Gateway Rail Freight Interchange Order 2019(45)”.

(3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 29 (time limit for exercise of authority to acquire land and rights compulsorily) of the Northampton Gateway Rail Freight Interchange Order 2019”.

- (4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
- (a) omit paragraphs 1(2) and 14(2); and
  - (b) after paragraph 29 insert—

## “PART 4 **E+W+S**

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 34 (temporary use of land for carrying out the authorised development) or 35 (temporary use of land for maintaining the authorised development) of Northampton Gateway Rail Freight Interchange Order 2019.”

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(42) Section 4 was amended by sections 184, 185 and 199(2) of, and paragraphs 1 and 2 of Part 1 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

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

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

(45) S.I. 2019/1358.



**Commencement Information**

**I30** Art. 30 in force at 30.10.2019, see [art. 1](#)

**Application of the 1981 Act** **E+W+S**

- 31.**—(1) The 1981 Act applies as if this Order was a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act), for subsection 2 substitute—
- “(2) This section applies to any Minister, any local or other public authority or any body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) In section 5(2)(**46**) (earliest date for execution of declaration) omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(**47**) (time limit for general vesting declaration).
- (6) In section 5B(1) (**48**) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 29 (time limit for exercise of authority to acquire land compulsorily) of the Northampton Gateway Rail Freight Interchange Order 2019”.
- (7) In section 6(1)(b)(**49**) (notices after execution of declaration) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(**50**) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7(1)(a)(**51**) (constructive notice to treat) omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1(**52**) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 30 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land and rights under this Order.

**Commencement Information**

**I31** Art. 31 in force at 30.10.2019, see [art. 1](#)

**Statutory undertakers and operators of the electronic communications code network** **E+W+S**

- 32.** The undertaker may, subject to Schedule 13 (protective provisions)—

- (**46**) Section 5 was amended by section 183 of, and paragraph 6 of Schedule 15 to, the Housing and Planning Act 2016 (c. 22).
- (**47**) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).
- (**48**) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).
- (**49**) Section 6 was amended by section 183 of, and paragraphs 4 and 7 of Schedule 15 to, the Housing and Planning Act 2016 (c. 22) and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).
- (**50**) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 and S.I. 2012/16.
- (**51**) Section 7 was amended by section 199(2) of, and paragraphs 1 and 3 of Part 1 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).
- (**52**) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

- (a) extinguish the rights of statutory undertakers and operators of the electronic communications code network within the Order limits; and
- (b) replace, reposition, renew, alter and supplement the apparatus belonging to statutory undertakers and operators of the electronic communications code network within the Order limits.

#### Commencement Information

**I32** Art. 32 in force at 30.10.2019, see [art. 1](#)

#### Rights under or over streets **E+W+S**

**33.**—(1) Subject to paragraph (6), the undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

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

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

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

(4) Subject to paragraph (5), any person who—

- (a) is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land; and
- (b) suffers loss as a result,

is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

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

#### Commencement Information

**I33** Art. 33 in force at 30.10.2019, see [art. 1](#)

#### Temporary use of land for carrying out the authorised development **E+W+S**

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

(a) enter on and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

- (ii) any of the Order land in respect of which no notice of entry has been served under section 11(53) (powers of entry) of the 1965 Act or no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
  - (b) remove any buildings and vegetation from that land;
  - (c) construct and use temporary works (including the provision of means of access) and buildings on that land; and
  - (d) construct or carry out any works on that land as are mentioned in Schedule 1 (authorised development).
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or
  - (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of 1 year beginning with the date of completion of the work for which temporary possession of that land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that [F3]land] or has otherwise acquired the land subject to temporary possession.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works (including temporary accesses to the public highway) and restore the land to the reasonable satisfaction of the owners of the land and any temporary highway accesses to the reasonable satisfaction of the relevant highway authority; but the undertaker is not required to—
- (a) replace a building removed under this article; or
  - (b) restore the land on which any permanent works have been constructed or carried out under paragraph (1)(d).
- (5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (6) Any dispute to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.
- (7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) Unless provided for in the book of reference and article 24 (compulsory acquisition of land) the undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1).
- (9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition

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(53) Section 11 was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of, and paragraphs 1 and 2 of Schedule 16 to, and paragraph 6 of Schedule 14 to, the Housing and Planning Act 2016 (c. 22), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous provisions) Measure 2006 (2006 No 1), and S.I. 2009/1307.

of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

#### Textual Amendments

**F3** Word in art. 34(3)(b) substituted (7.10.2020) by [The Northampton Gateway Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1670\)](#), arts. 1, **2(3)**

#### Commencement Information

**I34** Art. 34 in force at 30.10.2019, see [art. 1](#)

### Temporary use of land for maintaining the authorised development **E+W+S**

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

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

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

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

(3) Not less than 28 days before entering on and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

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

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

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

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

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

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

(10) Section 13(54) (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125(55) (application of compulsory acquisition provisions) of the 2008 Act.

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

#### Commencement Information

**I35** Art. 35 in force at 30.10.2019, see [art. 1](#)

### Apparatus and rights of statutory undertakers in stopped up streets **E+W+S**

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

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

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

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

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

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

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

and the placing of that new apparatus involves additional costs which would not have been incurred if the apparatus had been of the same type, capacity or laid at the same depth as the existing apparatus, then the amount payable to the statutory utility is to be reduced by a sum equivalent to those additional costs.

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

(54) Section 13 was amended by section 139(4) to (9) and section 62(3) of, paragraphs 27 and 28(1) to (3) of Schedule 13 to, and Part 3 of Schedule 28 to, the Tribunal, Courts and Enforcement Act 2007 (c. 15).

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

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

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

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

- (a) the allowable costs of the relocation works must be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs must be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

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**Commencement Information**

**I36** Art. 36 in force at 30.10.2019, see [art. 1](#)

**No double recovery** **E+W+S**

**37.** Compensation is not payable both under this Order and under any other enactment, any contract or any rule of law to the extent the compensation relates to the same detriment.

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**Commencement Information**

**I37** Art. 37 in force at 30.10.2019, see [art. 1](#)

**PART 6** **E+W+S**

**MISCELLANEOUS AND GENERAL**

**Operation and use of railways** **E+W+S**

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

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**Commencement Information**

**I38** Art. 38 in force at 30.10.2019, see [art. 1](#)

## Operational land for the purposes of the 1990 Act **E+W+S**

**39.** Development consent granted by this Order within that part of the Order limits upon which the highway works are to be carried out is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

### Commencement Information

**I39** Art. 39 in force at 30.10.2019, see [art. 1](#)

## Charges **E+W+S**

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

### Commencement Information

**I40** Art. 40 in force at 30.10.2019, see [art. 1](#)

## Defence to proceedings in respect of statutory nuisance **E+W+S**

**41.—**(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisance) of the Environmental Protection Act 1990(**56**) in relation to a nuisance falling within paragraph (g) of section 79(1)(**57**) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order may be made, and no fine may be imposed, under section 82(2)(**58**) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(**59**); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) Section 61(9)(**60**) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of the premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

(56) 1990 c. 43. There are amendments to this section which are not relevant to this Order.

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

(58) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6(b) of Schedule 17 to the Environment Act 1995 (c. 25).

(59) 1974 c. 40. Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55).

(60) Section 61(9) was amended by paragraph 15(1) and (3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43) and section 120 of, and Schedule 24 to, the Environment Act 1995 (c. 25).

#### Commencement Information

**I41** Art. 41 in force at 30.10.2019, see [art. 1](#)

### Felling or lopping of trees and removal of hedgerows **E+W+S**

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

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The provisions of paragraph (1) do not apply without the agreement of the relevant planning authority to any tree or hedgerow identified to be retained in the landscaping scheme approved under requirement 10 (provision of landscaping).

(5) The provisions of paragraph (1) do not apply without the agreement of the relevant highway authority to any tree or hedgerow within a highway.

(6) The undertaker may fell or lop or cut back any tree or shrub which is subject to a tree preservation order (as identified in appendix C of the arboricultural assessment) with the prior approval of the relevant planning authority, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

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

- (a) the undertaker is not to do unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

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

#### Commencement Information

**I42** Art. 42 in force at 30.10.2019, see [art. 1](#)

### Protective provisions **E+W+S**

**43.** Schedule 13 (protective provisions) to this Order has effect.

#### Commencement Information

**I43** Art. 43 in force at 30.10.2019, see [art. 1](#)



## Governance of requirements and governance of protective provisions relating to highway works **E+W+S**

44.—(1) When in any requirement or in Parts 2 and 3 of Schedule 13 (protective provisions) approval or agreement is required of, or with, anybody in relation to the content, carrying out or use of the authorised development (including the approval of details or plans under the requirements) such approval or agreement—

- (a) must not be given if it would permit a change to the development which would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement; and
- (b) is to be treated as if it were a “subsequent application” under the provisions of the 2017 EIA Regulations (whether or not it accords with the definition of “subsequent application” in the 2017 EIA Regulations) and the provisions of the 2017 EIA Regulations apply accordingly.

(2) When any details, plans or other matters have been agreed or approved by the relevant planning authority under a requirement or the relevant highway authority under a requirement or Parts 2 and 3 of Schedule 13 then such details, plans or other matters may subsequently be amended by agreement with the relevant planning authority or relevant highway authority, as the case may be, provided that no amendments to those details, plans or other matters may be approved where such amendments would permit a change to the development which would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement.

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

### Commencement Information

**I44** Art. 44 in force at 30.10.2019, see [art. 1](#)

## Disapplication, application and modification of legislative provisions **E+W+S**

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

- (a) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(**61**) in relation to watercourses for which Northamptonshire County Council is the drainage board concerned;
- (b) section 32(**62**) (variation of awards) of the Land Drainage Act 1991;
- (c) the provisions of any byelaws made under section 66(**63**) (powers to make byelaws) of the Land Drainage Act 1991; and

(61) 1991 c. 59. Section 23 was amended by section 31 of, and paragraphs 25 and 32 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29).

(62) Section 32 was amended by S.I. 2013/755.

(63) Section 66 was amended by section 31 of, and paragraphs 25 and 38 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c. 21). There are other amendments to section 66 but none are relevant.

(d) section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981(64).

(2) The provisions of the Neighbourhood Planning Act 2017(65) do not apply in so far as they relate to the temporary possession of land under articles 34 (temporary use of land for carrying out the authorised development) and 35 (temporary use of land for maintaining the authorised development) of this Order.

(3) Any development, or any part of a development, within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (development without development consent) and 161 (breach of terms of order granting development consent) of the 2008 Act(66).

(4) Regulation 4 (requirement for consent) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007(67) does not apply to any advertisement erected in the location and in accordance with the parameters shown on the parameters plan as S1 and S2.

(5) This Order does not constitute a planning permission for the purposes of Part 11 of the 2008 Act (community infrastructure levy) notwithstanding the definition of planning permission contained within regulation 5(68) (meaning of planning permission) of the 2010 Regulations.

(6) Schedule 14 (miscellaneous controls) to this Order, which makes provision applying, modifying and excluding statutory provisions which relate to matters for which provision may be made by this Order, has effect.

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

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**Commencement Information**

**I45** Art. 45 in force at 30.10.2019, see [art. 1](#)

**Certification of plans and documents** **E+W+S**

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

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

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**Commencement Information**

**I46** Art. 46 in force at 30.10.2019, see [art. 1](#)

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(64) [1981 c. 69](#). Section 28E was amended by section 105(1) of, and paragraphs 79 and 80 of Part 1 of Schedule 11 to, Natural Environment and Rural Communities Act 2006 (c. 16).

(65) [2017 c. 20](#).

(66) Sections 160 and 161 were amended by [S.I. 2015/664](#). Section 161 was also amended by section 112(2) of, and paragraph 4 of Part 1 of Schedule 8 to, the Marine and Coastal Access Act 2009 (c. 23).

(67) [S.I. 2007/783](#).

(68) Regulation 5 was amended by [S.I. 2012/2975](#) and [S.I. 2013/982](#).

## Service of notices **E+W+S**

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978<sup>(69)</sup>, as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

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

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

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

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

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

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

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

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

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<sup>(69)</sup> 1978 c. 30.

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

(10) In this article—

“electronic transmission” means a communication transmitted—

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

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

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**Commencement Information**

**I47** Art. 47 in force at 30.10.2019, see [art. 1](#)

**Arbitration** **E+W+S**

**48.** Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order, other than a difference which falls to be determined by the tribunal or is the subject of enforcement action under Part 8 of the 2008 Act, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party, after giving notice in writing to the other, by—

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

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**Commencement Information**

**I48** Art. 48 in force at 30.10.2019, see [art. 1](#)

Signed by authority of the Secretary of State for Transport

9th October 2019

*Ros Wall*  
Director, Road Safety Standards and Services  
Department for Transport

**Changes to legislation:**

There are currently no known outstanding effects for the The Northampton Gateway Rail Freight Interchange Order 2019.