
STATUTORY INSTRUMENTS

2020 No. 325

The Reinforcement to the North Shropshire
Electricity Distribution Network Order 2020

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as The Reinforcement to the North Shropshire Electricity Distribution Network Order 2020 and comes into force on 14th April 2020.

Interpretation

2.—(1) In this Order—

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

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

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

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

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

“the 1989 Act” means the Electricity Act 1989(6);

“the 1990 Act” means the Town and Country Planning Act 1990(7);

“the 1991 Act” means the New Roads and Street Works Act 1991(8);

“the 2003 Act” means the Communications Act 2003(9);

“the 2008 Act” means the Planning Act 2008(10);

“the A5(T)” means the A5 Trunk Road between to the north, the junction with the A495 and the B4590, and, to the south, the junction with the A483;

“access and rights of way plans” means the plans certified as the access and rights of way plans by the Secretary of State under article 35 (certification of plans etc.) and Schedule 9 (documents to be certified) for the purposes of this Order;

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

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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) 1989 c.29.
(7) 1990 c.8.
(8) 1991 c.22.
(9) 2003 c.21.
(10) 2008 c.29.

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

“authorised development” means the development of a 132kV overhead line comprising the nationally significant infrastructure project (Work No.3) and associated development described in Schedule 1 (authorised development), and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act (meaning of development);

“the book of reference” means the book of reference certified as the book of reference by the Secretary of State under article 35 and Schedule 9 for the purposes of this Order;

“the Canal & River Trust” means a company limited by guarantee (company registration number 07807276) whose registered office is at First Floor, North Station House, 500 Elder Gate, Milton Keynes MK9 1BB and a registered charity registered with the charity commission number 1146792;

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

“compulsory acquisition notice” means a notice served in accordance with section 134(11) of the 2008 Act (notice of authorisation of compulsory acquisition);

“construction report” means the construction report certified as the construction report by the Secretary of State under article 35 and Schedule 9 for the purposes of this Order;

“date of final commissioning” means the date on which the authorised development first comes into use by distributing electricity at 132kV on a commercial basis;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network, or
- (b) by other means in electronic form;

“the environmental statement” means the documents of that description listed in Schedule 9 and certified by the Secretary of State under article 35 and Schedule 9 as the environmental statement for the purposes of this Order;

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

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

“Highways England” means Highways England Company Limited (company registration number 9346363) of Bridge House, 1 Walnut Tree Close, Guildford, GU1 4LZ;

“land plans” means the plans certified as the land plans by the Secretary of State under article 35 and Schedule 9 for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 4 (limits of deviation);

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and any derivative of “maintain” must be construed accordingly;

“Order land” means the land shown on the land plans and described in the book of reference within which the authorised development is taking place;

“the Order limits” means the limits shown on the land plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(interpretation)(12);

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

(12) 1981 c.67. A relevant amendment to section 7 was made by the Planning and Compensation Act 1991 c.34, section 70, Schedule 15, paragraph 9.

“plans of important hedgerows affected” means the plans certified as the plans of important hedgerows affected by the Secretary of State under article 35 and Schedule 9 for the purposes of this Order;

“relevant highway authority” means Shropshire Council, or Highways England in relation to the A5(T);

“relevant planning authority” means Shropshire Council;

“requirements” means those matters set out in Schedule 2 to this Order and any numbered requirement must be construed accordingly;

“SP Manweb PLC” means SP Manweb PLC (company registration number 02366937) whose registered office is at 3 Prenton Way, Prenton, CH43 3ET;

“statutory undertaker” means (except in Schedule 6, Part 2) any person falling within section 127(8) of the 2008 Act (statutory undertakers’ land) or a public communications provider as defined in section 151 of the 2003 Act (interpretation of Chapter 1);

“street” means a street within the meaning of section 48 of the 1991 Act⁽¹³⁾ (streets, street works and undertakers), together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act⁽¹⁴⁾;

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

“traffic authority” has the same meaning as in section 121A of the 1984 Act (traffic authorities);⁽¹⁵⁾

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

“undertaker” means SP Manweb PLC or any other person who has the benefit of this Order in accordance with article 7 (benefit of the Order) or article 8 (consent to transfer benefit of the Order);

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

“the works plans” means the plans certified as the works plans by the Secretary of State under article 35 and Schedule 9 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 airspace above its surface and references in this Order to the imposition of restrictions are references to restrictions over land which interfere with the interests or rights of another and are for the benefit of land over which rights are acquired and created under this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points are taken to be measured between the referenced points.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans.

⁽¹³⁾ A relevant amendment to section 48 was made by Local Transport Act 2008, section 124(1), (2).

⁽¹⁴⁾ A relevant amendment to the 1991 Act was made by the Infrastructure Act 2015, section 1(6), Schedule 1, paragraphs 113 and 117.

⁽¹⁵⁾ Section 121A was inserted by the 1991 Act, section 168(1), schedule 8 paragraph 70 and relevant amendments were made by the Infrastructure Act 2015, section 1(6), Schedule 1 paragraphs 70 and 95(1) to (3) and by [S.I. 2001/1400](#) and [S.I. 200/1400](#).

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) The undertaker is granted development consent for the authorised development as set out in Schedule 1 (authorised development), to be carried out within the Order limits and subject to the provisions of this Order including the requirements set out in Schedule 2 (requirements).

(2) Subject to article 4 (limits of deviation), each numbered work must be situated in the area shown on the works plans.

Limits of deviation

4. In carrying out or maintaining the authorised development the undertaker may—

- (a) subject to requirements 3 and 4, deviate from the lines or situations of the authorised development shown on the works plans and carry out construction and maintenance for the purposes of the authorised development anywhere within the Order limits; and
- (b) deviate vertically from the levels of the authorised development set out in column 3 of Table 1 of requirement 3—
 - (i) to any extent not exceeding 2 metres upwards; or
 - (ii) to any extent downwards as may be found necessary or convenient.

Operation of authorised development

5.—(1) The undertaker is authorised to install and keep installed the authorised development.

(2) This article does not relieve the undertaker of obtaining any permit or licence under any other legislation that may be required from time to time authorising the installation, maintenance or use of the authorised development.

(3) The undertaker may use the authorised development as part of the electricity distribution system in England and Wales.

Maintenance of authorised development

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

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Benefit of the Order

7.—(1) Subject to article 8 (consent to transfer benefit of the Order), and paragraph (2), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply where this Order provides an express benefit to owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of the Order

8.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of this Order and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
 - (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of this Order and such related statutory rights as may be so agreed.
- (2) Where a transfer, or grant, has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.
- (3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.
- (4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—
- (a) the transferee or lessee is a statutory undertaker;
 - (b) the transferee or lessee is a person who holds a licence issued under section 6(1) of the 1989 Act (licences authorising supply, etc)(**16**); or
 - (c) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of all such claims;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.
- (5) Where an exception in paragraph (4) applies, the undertaker must notify the Secretary of State in writing before transferring or granting any benefit referred to in paragraph (1).
- (6) The notification referred to in paragraph (5) must state—
- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
 - (b) subject to paragraph (7), the date on which the transfer will take effect;
 - (c) the powers to be transferred or granted;
 - (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
 - (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.
- (7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.
- (8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(16) 1989 c.29. Section 6(1) was substituted by the Utilities Act 2000 (c. 27) section 30 and was amended by the Energy Act 2004 c.20, sections 136(1), 145 and 197, Schedule 23, Part 1 and by S.I. 2012/2400.

PART 3

STREETS

Power to alter layout, etc. of streets

9.—(1) Subject to paragraphs (2) and (3), the undertaker may, for the purposes of constructing and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) permanently or temporarily alter the layout of any street or junction;
- (b) 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;
- (c) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
- (d) reduce the width of the carriageway of the street;
- (e) make and maintain crossovers and passing place(s);
- (f) carry out works for the provision of parking places and unloading areas; and
- (g) execute any works to provide or improve sight lines.

(2) Unless otherwise agreed in writing with the street authority, the undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority.

(4) Paragraphs (1)(a), (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

(5) The powers conferred by paragraph (1) do not apply to the A5(T).

Street works

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

(2) The authority given by paragraph (1) is a statutory right for the purposes of section 48(3) (streets, street works and undertakers) and 51(1) of the 1991 Act (prohibition of unauthorised street works).

(3) The powers conferred in paragraphs (1) and (2) are without prejudice to the powers of the undertaker under the 1989 Act.

(4) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Temporary prohibition or restriction of use of streets and public rights of way

11.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit the use of or restrict the use of any street or public right of way and may for any reasonable time—

- (a) divert the traffic from the street or public right of way; and
- (b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) going to or from premises abutting a street or public right of way affected by the temporary alteration, diversion, prohibition of use or restriction of use of a street under this article if there would otherwise be no such access, and ensure that relevant provision is made for residents to park and for services to access properties which may be affected by the temporary alteration, diversion, prohibition of use or restriction of use of a street or public right of way under this article.

(4) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority which may attach reasonable conditions to any consent.

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

(6) This article does not remove the requirement for the undertaker to obtain any order required under sections 1, 9 or 22BB of the 1984 Act (traffic regulation orders outside Greater London) (experimental traffic orders) (traffic regulation byways etc. on National Parks in England and Wales).

Traffic regulation

12.—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to the date of final commissioning—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (b) authorise the use as a parking place of any road; and
- (c) make provision as to the direction or priority of vehicular traffic on any road either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise any prohibition, restriction or other provision under article 11 or paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 11 or paragraph (1)—

- (a) has effect as if duly made by, as the case may be—
 - (i) by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (ii) by the local authority in whose area the road is situated as an order under section 32 of the 1984 Act (power of local authorities to provide parking places)**(17)**,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement)**(18)**.

(4) In this article—

(17) Relevant amendments to section 32 were made by the 1991 Act section 168(1), Schedule 8, paragraph 39.

(18) 2004. c.18. There are amendments to this Act not relevant to this Order.

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

Access to works

13.—(1) The undertaker may, for the purposes of the authorised development and with the consent of the relevant planning authority, after consultation with the relevant highway authority, form and lay out such means of access or improve the 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 powers conferred by paragraph (1) do not apply to the A5(T).

Agreement with street authorities

14.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street under or over the authorised development) authorised by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) any temporary closure, alteration or diversion of a street authorised by this Order;
- (d) the carrying out in the street of any works.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

15.—(1) Subject to paragraphs (2) to (8), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation 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 pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers)(**19**).

(19) 1991 c.56. Section 106 was amended by the Competition and Service (Utilities) Act 1992 (c.43), sections 43(2) and 35(8)(a) and Schedule 2 paragraph 1, the Water Act 2003 (c. 37) sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2)) and the Flood and Water Management Act 2010 c.29, section 32, Schedule 3, paragraph 16(1).

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

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Except as otherwise authorised under this Order, the undertaker must not, in carrying out or maintaining works, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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

(7) This article does not authorise any water discharge activities or groundwater activities for which a licence is required pursuant to regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016 (requirement for an environmental permit)(20).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(21) have the same meaning as in that Act.

Authority to survey and investigate the land

16.—(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 prejudice to the generality of sub-paragraph (a), make trial holes, boreholes or excavations 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 prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place and leave on the land apparatus for use in connection with the survey and investigation of land and making of trial holes, boreholes or excavations.

(2) No land may be entered or equipment placed or left on the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

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

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

(4) No trial holes, boreholes or excavations are to 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 street authority.

(20) S.I. 2016/1154.

(21) 1991 c.57 was amended by S.I. 2009/3104.

- (5) The undertaker must—
- (a) make good any damage to the land where it has made a trial hole, boreholes or excavation;
 - (b) remove from the land any apparatus used in connection with the survey and investigation of land when no longer required; and
 - (c) compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of rights: incorporation of the mineral code

17. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981⁽²²⁾ (minerals) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for the “acquiring authority” there is substituted “the undertaker”.

Compulsory acquisition of rights

18.—(1) The undertaker may create and acquire compulsorily the rights in, under or over the Order land and impose the restrictions affecting the Order land described in the book of reference and shown on the land plans.

(2) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act⁽²³⁾ (as substituted by paragraph 5(8) of Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights)) and section 12 of the 1981 Act (divided land)⁽²⁴⁾, where the undertaker creates or acquires a right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 4 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 of a right in, under or over land by the creation of a new right or imposition of a restriction.

(4) In any case where the creation and acquisition of rights or the imposition of a restriction under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictions to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power pursuant to a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(6) Subject to the modifications set out in Schedule 4 of the 1965 Act the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the

⁽²²⁾ 1981 c.67, amended by S.I. 2019/1307.

⁽²³⁾ Section 8 was amended and Schedule 2A substituted by the Housing and Planning Act 2016 c.22, section 199(1) and Schedule 17, paragraphs 1 and 2 and by S.I.2009/1307.

⁽²⁴⁾ Section 12 was amended by the Housing and Planning Act 2016, Schedule 18, paragraphs 1 and 5.

case of a compulsory acquisition under this Order in respect of a right by the creation of a new right as they apply to the compulsory purchase of land and interests in land.

Statutory authority to override easements and other rights

19.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), despite it involving—

- (a) an interference with an interest or right to which this article applies; or
 - (b) a breach of a restriction as to use of land arising by virtue of contract.
- (2) The undertaker must pay compensation to any person whose land is injuriously affected by—
- (a) an interference with an interest or right to which this article applies; or
 - (b) a breach of a restriction as to use of land arising by virtue of contract,

caused by the carrying out or use of the authorised development and the operation of section 158 of the 2008 Act.

(3) 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.

(4) Subsection (2) of section 10 of the 1965 Act (further provision as to compensation for injurious affection) applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

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

Time limit for exercise of authority to acquire rights compulsorily

- 20.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—
- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
 - (b) no declaration may be executed under section 4 of the 1981 Act⁽²⁵⁾ (execution of declaration) as applied by article 22 (application of the 1981 Act).

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Private rights

21.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory creation and acquisition of rights or the imposition of restrictions under the Order are to be suspended as is necessary to ensure the operation of the Order and insofar as their continuance would be inconsistent with the exercise of the right created and acquired or the burden of the restriction imposed—

- (a) as from the date of creation and acquisition of the right or the benefit of the restriction by the undertaker, whether compulsorily or by agreement, or

(25) Section 4 was amended by the Housing and Planning Act 2016, sections 184 and 185 and Schedule 18, paragraphs 1 and 2.

- (b) on the date of entry on the land by the undertaker under section 11(1)(26) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants save any such rights benefitting the undertaker over land of which the undertaker takes temporary possession under this Order are to be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

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

(4) This article does not apply in relation to any right to which section 138 of the 2008 Act(27) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

- (i) the completion of the creation and acquisition of rights or the imposition of restrictions over or affecting the land;
- (ii) the undertaker's appropriation of that land;
- (iii) the undertaker's entry onto that land; or
- (iv) the undertaker's taking temporary possession of that land,

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 or restrictive covenant in question is vested or belongs.

(6) If any such agreement referred to in paragraph (5)(b)—

- (a) is made with a person in or to whom the right or restrictive covenant 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.

(7) Reference in this article to private rights and restrictive covenants over land includes any trust, incident, easement, wayleave, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including natural right to support and personal covenants.

Application of the 1981 Act

22.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), for subsection (2) there is substituted—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

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

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

(4) In section 5 (earliest date for execution of declaration), in subsection 2, omit the words from “, and this subsection” to the end.

(5) Omit section 5A (time limit for general vesting declaration).

(6) In section 5B(1)(28) (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118(29) of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 20 (time limit for exercise of authority to acquire rights compulsorily) of the Reinforcement to the North Shropshire Electricity Network Order 2020”.

(7) In section 6(30) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(31) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7(32) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1(33) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—

“(2) But see article 23(3) (acquisition of subsoil or airspace only) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 2020 which excludes the acquisition of subsoil or airspace only from this Schedule.”

(10) References to the 1965 Act in the 1981 Act are to be construed as references to that Act as applied by section 125(34) (application of compulsory acquisition provisions) of the 2008 Act as modified by article 24 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of rights under this Order.

Acquisition of subsoil or airspace only

23.—(1) The undertaker may acquire compulsorily such rights in the subsoil of, or the airspace over, the land referred to in article 18 (compulsory acquisition of rights) as may be required for any purpose for which rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring any greater interest in that land.

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

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

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

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

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

(30) Section 6(1)(b) was amended by the Housing and Planning Act 2016 Schedule 15, paragraph 17.

(31) Section 134 was amended by the Localism Act 2011 sections 142 and 237 and Schedule 25, part 21 25 to and by [S.I. 2012/16](#) and [S.I. 2017/16](#).

(32) Section 7 was amended by the Housing and Planning Act 2016, section 199(2), and Schedule 18, paragraphs 1 and 3.

(33) Schedule A1 was inserted by the Housing and Planning Act 2016, Schedule 18 paragraph 6.

(34) Section 125 was amended by the Housing and Planning Act 2016, section 190, Schedule 16, paragraph 17.

(c) Section 153(4A)(35) (reference of objection to the Upper Tribunal: general - blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory or airspace above a house building or manufactory.

Modification of Part 1 of the 1965 Act

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

(2) In section 4A(1)(36) (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” 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 20 (time limit for exercise of authority to acquire rights compulsorily) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 2020”.

(3) In section 11A(37) (powers of entry: further notices of entry)—

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

(b) in subsection (2) after “land” insert “under that provision”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 20 (time limited for exercise of authority to acquire rights compulsorily) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 2020”.

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

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

“(2) But see article 23(3) (acquisition of subsoil or airspace only) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 2020, which excludes the acquisition of subsoil or airspace only from this Schedule”

(b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 26 (temporary use of land for carrying out the authorised development) or article 27 (temporary use of land for maintaining the authorised development) of The Reinforcement to the North Shropshire Electricity Distribution Network Order 2020.”

Rights under or over streets

25.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes.

(35) Section 153(4A) was inserted by the Housing and Planning Act 2016, section 200(1) and (2).

(36) Section 4A was inserted by the Housing and Planning Act 2016, section 202(1).

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

(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) is not to apply in relation to—

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

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

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

Temporary use of land for carrying out the authorised development

26.—(1) Subject to article 20(2) (time limit for exercise of authority to acquire rights compulsorily) and subject to paragraphs (2) to (11), the undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) so much of the land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);
- (b) remove any electric line, electrical plant, buildings, structures, poles, means of enclosure, apparatus and vegetation from that land;
- (c) construct temporary works (including the provision of means of access, gates, fences and other boundary structures) on that land and use that land as temporary laydown area, storage area and working area;
- (d) construct any works specified in relation to that land in column (3) of Schedule 5; and
- (e) carry out reinstatement works required pursuant to the requirements in Schedule 2 (requirements).

(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 after the end of the period of one year beginning with the date of final commissioning unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4(38) of the 1981 Act (execution of declaration) or has otherwise acquired the land subject to temporary possession.

(38) Section 4 was amended by the Housing and Planning Act 2016, sections 184,185 and 199(2), and Schedule 18, paragraphs 1 and 2.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under either paragraph (1)(a)(i) or (1)(a)(ii), remove all temporary (including accesses to the public highway) and restore the land to the reasonable satisfaction of the owners of the land and any highway access to the reasonable satisfaction of the relevant highway authority; but the undertaker is not required to—

- (a) replace any electric line, electrical plant, buildings, structures, poles and apparatus removed under this article; or
- (b) restore the land on which any works have been carried out under paragraph (1)(d) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2.

(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 as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152(39) of the 2008 Act (compensation in case where no right to claim in nuisance) 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) Nothing in this article precludes the undertaker from—

- (a) acquiring new rights or imposing restrictions on any part of the Order land under article 18 (compulsory acquisition of rights); or
- (b) acquiring any right in the subsoil or of airspace over the Order land under article 23 (acquisition of subsoil or airspace only).

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

(10) Section 13(40) of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 5.

(12) The provisions of Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017(41) do not apply insofar as they relate to temporary possession of land under this article.

(13) The undertaker may not rely on the power conferred by paragraph (1)(c) to construct any new means of access without the consent of Highways England where they are the relevant highway authority for the highway from which the access will be taken.

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

(40) Section 13 was amended by the Tribunals, Courts and Enforcement Act [2007 c.15](#), section 139(4) to (8), section 62(3) and Schedule 13, paragraphs 27, 28(1) to (3), and Schedule 23, Part 3.

(41) [2017 c.20](#).

Temporary use of land for maintaining the authorised development

27.—(1) Subject to article 20(2) (time limit for exercise of authority to acquire rights compulsorily) and subject to paragraphs (2) to (10), 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) construct such temporary works (including the provision of means of access) and structures on the land as may be reasonably necessary for that purpose; and
- (c) enter on any land within the Order limits for the purpose of gaining access as is reasonably required for the purpose of maintaining the authorised development.

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

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

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

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

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

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

(11) In this article “the maintenance period” in relation to any part of the authorised development means the period of 5 years beginning with the date of final commissioning.

(12) Paragraph (1) does not authorise the undertaker to construct or provide any new means of access unless the undertaker has obtained the consent of Highways England where they are the highway authority for the highway from which the access will be taken.

(13) The provisions of Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017 do not apply insofar as they relate to the temporary possession of land under this article.

Special category land

28.—(1) Subject to the provisions of this article, so much of the special category land as will be required for the purposes of the exercising by the undertaker of the Order rights will be suspended from all rights, trusts and incidents to which it was previously subject—

- (a) as from the date of creation and acquisition of the right or the benefit of the restriction 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 (power of entry) in pursuance of the right,

whichever is the earliest.

(2) So far as the temporary use of land under article 26 (temporary use of land for carrying out the authorised development) is concerned, the suspension in paragraph (1) is only for such time as the land is being used under that article.

(3) In this article—

“Order rights” means rights and powers exercisable over the special category land by the undertaker under article 18 (compulsory acquisition of rights), article 26 (temporary use of land for carrying out the authorised development); and

“the special category land” means the land numbered 2, 3 and 4 identified as forming part of a common, open space, or fuel or field allotment in the book of reference and on the land plans.

Statutory undertakers

29.—(1) Schedule 6 (protective provisions) has effect.

(2) Subject to the provisions of Schedule 6, the undertaker may—

- (a) extinguish or suspend the rights of, remove or reposition the apparatus belonging to, statutory undertakers shown on the land plans and described in the book of reference; and
- (b) create and acquire compulsorily the rights or impose restrictions over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

Recovery of costs of new connections

30.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 any person who is—

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

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

(3) In this article—

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

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6 OPERATIONS

Felling or lopping of trees and removal of hedgerows

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

- (a) 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) constituting a danger to persons using the authorised development.

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

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

(4) The undertaker may, for the purposes of the authorised development—

- (a) subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 8 (removal of important hedgerows).

(5) The power conferred by paragraph (4) removes any obligation upon the undertaker to secure any consent under the Hedgerows Regulations 1997⁽⁴²⁾.

(6) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerows Regulations 1997.

PART 7 MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

32.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to use the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

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

⁽⁴²⁾ S.I. 1997/1160, amended by the Countryside and Rights of Way Act 2000 c.37, section 73(2) and by S.I. 2003/2155, S.I. 2006/1177, S.I. 2009/1307 and S.I. 2015/377.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for the purposes of the 1990 Act

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

Defence to proceedings in respect of statutory nuisance

34.—(1) Where proceedings are brought under section 82(1)(**43**) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1)(**44**) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61(**45**) (prior consent for work on construction sites) of the Control of Pollution Act 1974(**46**);
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

(43) 1990 c.43. Section 82(1) was amended by the Environment Act 1995 (c.25) section 107, Schedule 17, paragraph 6. Section 82(2) was inserted by the Noise and Statutory Nuisance Act 1993 (c.40), section 5(2) and amended by the Environment Act 1995.

(44) Relevant amendments to section 79(1) were made by the Noise and Statutory Nuisance Act 1993, section 2, the Environment Act 1995 c.25, section 120, Schedule 22, paragraph 89(2) and by the Clean Neighbourhoods and Environment Act 2005 c.16, section 101.

(45) Section 61 was amended by the Building Act 1984 c.55, section 133(2), Schedule 7, the Environmental Protection Act 1990 c.43, section 162, Schedule 15 paragraph 15 and the Environment Act 1995 c.25, Schedule 24 paragraph 1.

(46) 1974 c. 40.

Certification of plans etc.

35.—(1) The undertaker must, as soon as practicable after the date on which this Order is made, submit to the Secretary of State copies of the documents listed in Schedule 9 (documents to be certified) for certification that they are true copies of the plans or documents referred to in this Order.

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

Service of notices

36.—(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 of the Interpretation Act 1978⁽⁴⁷⁾ (references to service by post) 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 that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that 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 an 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 the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the 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 to be taken to be fulfilled only where—

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

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

(47) 1978 c.30.

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

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

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

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

Procedure in relation to certain approvals etc.

37.—(1) Where an application is made to or request is made of the relevant planning authority, a relevant highway authority, a traffic authority, a street authority, or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Save for the applications made pursuant to Schedule 7 (procedure for discharge of requirements) and any application made to Highways England, if, within 42 days after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed in writing with the undertaker) it has not notified the undertaker of its decision (and if it is a disapproval the grounds of disapproval), it is deemed to have approved the application or request.

(3) Schedule 7 is to have effect in relation to all consents, agreements or approvals required from the relevant planning authority pursuant to the requirements.

(4) The powers conferred by paragraph (1) do not apply to an application to or request made of Highways England in relation to the A5(T).

Arbitration

38. Subject to article 37 (procedure in relation to certain approvals etc.) and except where otherwise provided for in this Order any difference under any provision of this Order, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Emily Bourne
Director Energy Development and Resilience
Department for Business, Energy and Industrial
Strategy

20th March 2020