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STATUTORY INSTRUMENTS

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**2020 No. 511**

**INFRASTRUCTURE PLANNING**

**The West Midlands Rail Freight Interchange Order 2020**

*Made* - - - - *4th May 2020*

*Coming into force* - - *25th May 2020*

An application has been made to the Secretary of State under section 37 of the Planning Act 2008 <sup>M1</sup> (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 <sup>M2</sup> for an order granting development consent.

The application was examined in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010 <sup>M3</sup> by a single person appointed by the Secretary of State in accordance with Chapter 3 of Part 6 of the 2008 Act.

The single appointed person, having considered the representations made and not withdrawn and the application with the accompanying documents, in accordance with section 83 of the 2008 Act has reported to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn and the report of the single appointed person has decided to make an Order granting development consent for the development described in the application with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

The Secretary of State in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of, and paragraphs 1 to 3, 10 to 15, 17, 19, 20, 22 to 24, 26, 33 to 37 of Schedule 5 to, the 2008 Act, makes the following Order—

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**Marginal Citations**

- M1** 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the [Localism Act 2011 \(c. 20\)](#).  
**M2** [S.I. 2009/2264](#), amended by [S.I. 2010/439](#), [S.I. 2010/602](#), [S.I. 2012/635](#), [S.I. 2012/2654](#), [S.I. 2012/2732](#), [S.I. 2013/522](#), [S.I. 2013/755](#), [S.I. 2014/469](#), [S.I. 2014/2381](#), [S.I. 2015/377](#), [S.I. 2015/1682](#), [S.I. 2017/524](#), [S.I. 2017/572](#), [S.I. 2018/378](#) and [S.I. 2019/734](#).  
**M3** [S.I. 2010/103](#), amended by [S.I. 2012/635](#).

## PART 1

### PRELIMINARY

#### Citation and Commencement

1. This Order may be cited as the West Midlands Rail Freight Interchange Order 2020 and comes into force on 25th May 2020.

#### Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961 <sup>M4</sup>;

“the 1965 Act” means the Compulsory Purchase Act 1965 <sup>M5</sup>;

“the 1973 Act” means the Land Compensation Act 1973 <sup>M6</sup>;

“the 1980 Act” means the Highways Act 1980 <sup>M7</sup>;

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981 <sup>M8</sup>;

“the 1984 Act” means the Road Traffic Regulation Act 1984 <sup>M9</sup>;

“the 1990 Act” means the Town and Country Planning Act 1990 <sup>M10</sup>;

“the 1991 Act” means the New Roads and Street Works Act 1991 <sup>M11</sup>;

“the 2007 Regulations” means the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 <sup>M12</sup>;

“the 2008 Act” means the Planning Act 2008 <sup>M13</sup>;

“the 2010 Regulations” means the Community Infrastructure Levy Regulations 2010 <sup>M14</sup>;

“the 2017 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 <sup>M15</sup>;

“A5/A449 link road” means the new road to be constructed as part of the authorised development between the A5 trunk road and the A449 (Stafford Road) being Works No. 4;

“access and rights of way plans” means the plans of that description referred to in Schedule 15 (certification 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 [F136] (apparatus and rights of statutory undertakers in stopped up streets) has the same meaning as in Part 3 of the 1991 Act;

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

“book of reference” means the document of that description referred to in Schedule 15 and certified by the Secretary of State as the book of reference for the purposes of this Order;

“bridge plans” mean the plans of that description referred to in Schedule 15 and certified as the bridge plans by the Secretary of State for the purposes of this Order;

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

“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 to the Traffic Signs Regulations and General Directions 2016 <sup>M16</sup>;

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

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

“cycle track” has the same meaning as in section 329(1) <sup>M17</sup> (further provisions as to interpretation) of the 1980 Act;

“electronic communications code” has the same meaning as in section 106 (application of the electronic communications code) of the Communications Act 2003 <sup>M18</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;

“environmental statement” means the document of that description referred to in Schedule 15 and certified by the Secretary of State as the environmental statement for the purposes of this Order;

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

“future highway maintenance plans” means the plans of that description referred to in Schedule 15 and certified as the future highway maintenance plans for the purposes of this Order;

“hedgerow” includes hedgerows to which the Hedgerow Regulations 1997 <sup>M19</sup> apply;

“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 15 and certified as highway classification plans by the Secretary of State for the purposes of this Order;

“highway general arrangement plans” means the plans of that description referred to in Schedule 15 and certified as the highway general arrangement plans by the Secretary of State for the purposes of this Order;

“highway works” means the works comprised in Works Nos. 4, 5, 7, 10a, 10b and [F211];

“Highways England” means Highways England Company Limited (company number 09346363), whose registered office is at Bridge House, Walnut Tree Close, Guildford, GU1 4ZZ, appointed as highway authority for the highways specified in article 2 of the Appointment of a Strategic Highways Company Order 2015 <sup>M20</sup> or any successor in function;

“illustrative arrangement of railway alignment plan” means the plan of that description referred to in Schedule 15 and certified as the illustrative arrangement of railway alignment plan by the Secretary of State for the purposes of this Order;

“land plans” means the plans of that description referred to in Schedule 15 and certified as the land plans by the Secretary of State for the purposes of this Order;

“lead local flood authority” means Staffordshire County Council or any successor in function;

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*Status: Point in time view as at 21/10/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)*

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

“local planning authority” means South Staffordshire District Council or any successor in function;

“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 and 6;

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

“occupation” means occupation other than for the purposes of construction, fitting out, commissioning or site security;

“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 Order limits plan represented by a red line within which the authorised development may be carried out;

“Order limits plan” means the plan of that description referred to in Schedule 15 and certified as the Order limits plan by the Secretary of State for the purposes of this Order;

“owner” in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981<sup>M21</sup>;

“parameters plans” means the plans of that description referred to in Schedule 15 and certified as the parameters plans by the Secretary of State for the purposes of this Order;

“phase” means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the local planning authority under requirement 2 (phases of development);

“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;

“rail section plans” means the plans of that description referred to in Schedule 15 and certified as the rail section plans by the Secretary of State for the purposes of this Order;

“rail terminal – illustrative expanded rail terminal layout plan” means the plan of that description referred to in Schedule 15 and certified as the rail terminal – illustrative expanded rail terminal layout plan by the Secretary of State for the purposes of this Order;

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

“relevant body” means in respect of each of the highway works the body referred to in respect of each of those works in column (4) of the table in requirement 25 (transport – phasing of highway works);

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

“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 [F336] (apparatus and rights of statutory undertakers in stopped up streets);

“remediation safeguarding report” means the report of that description contained in technical appendix 11.5 of the environmental statement;

“remediation strategy” means the strategy to ensure the effective continuation of on-going groundwater remediation works within the SI land set out in the remediation safeguarding report;

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

“SI facility” means the chemical works occupied and operated by the SI Group located to the east of the SI land outwith the Order limits;

“SI Group” means SI Group-UK Ltd whose company number is 00667049 and whose registered office is at Four Ashes, Wolverhampton, WV10 7BT or (as respectively defined in section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006 <sup>M22</sup>) a holding company of such company, a subsidiary of such company or another subsidiary of such holding company;

“SI land” means the land shown as parcel numbers 11, 14 and 18 on the land plans;

“speed limit plans” means the plans of that description referred to in article Schedule 15 and certified by the Secretary of State as the speed limits plan for the purposes of this Order;

“statutory undertaker” means a statutory undertaker for the purposes of section 127(8) <sup>M23</sup> (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) <sup>M24</sup> (interpretation of Chapter 1) of the Communications Act 2003;

“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>M25</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;

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

“traffic authority” has the same meaning as “local traffic authority” in section 121A <sup>M26</sup> (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 <sup>M27</sup>;

“traffic regulation plans” means the plans of that description referred to in Schedule 15 and certified by the Secretary of State as the traffic regulation plans for the purposes of this Order;

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

“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 <sup>M28</sup>;
- (b) an order or direction under section 10 of that Act;
- (c) this Order; or
- (d) any other enactment;

“the undertaker” means—

- (a) Four Ashes Limited, whose company number is 09747871 and whose registered office is 4th Floor, 7/10 Chandos Street, Cavendish Square, London, W1G 9DQ; 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, but does not include SI Group unless SI Group is carrying out part of the authorised development under this Order other than the remediation strategy and does not include any other person who owned land

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within the main site at the date of this Order until such time as the authorised development is commenced on land owned by that person;

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

“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 15 and certified as the works plans by the Secretary of State for the purposes of this Order.

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

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

(4) References in this Order to numbered works are references to the works as numbered in Schedule 1 and references to numbered requirements are to the requirements as numbered in Part 1 and Part 2 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 the term approximate precedes a figure of measurement or quantum then the flexibility accorded by that word is limited by the parameters and the limits of deviation as described in article 4 (parameters of authorised development) and does not authorise any 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.

(7) Where in this Order a document or 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 15.

#### Textual Amendments

- F1** Word in art. 2(1) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, **2(2)(a)**
- F2** Word in art. 2(1) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, **2(2)(b)**
- F3** Word in art. 2(1) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, **2(2)(c)**

#### Marginal Citations

- M4** 1961 c. 33.
- M5** 1965 c. 56.
- M6** 1973 c. 26.
- M7** 1980 c. 66.
- M8** 1981 c. 66.
- M9** 1984 c. 27.
- M10** 1990 c. 8.
- M11** 1991 c. 22.
- M12** [S.I. 2007/783](#), amended by [S.I. 2011/2057](#), [S.I. 2011/3058](#), [S.I. 2012/2372](#), [S.I. 2013/2114](#), [S.I. 2015/377](#), [S.I. 2017/1011](#) and [S.I. 2019/907](#).
- M13** 2008 c. 29.

- M14** [S.I. 2010/948](#), 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. 2015/644](#), [S.I. 2015/836](#), [S.I. 2018/172](#), [S.I. 2019/966](#) and [S.I. 2019/1103](#).
- M15** [S.I. 2017/572](#), amended by [S.I. 2017/1012](#), [S.I. 2018/695](#), [S.I. 2018/834](#) and [S.I. 2018/1232](#).
- M16** [S.I. 2016/362](#). There are amendments to the Regulations which are not relevant to this Order.
- M17** 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 \(c. 54\)](#).
- M18** [2003 c. 21](#). Section 106 was amended by section 4 of the [Digital Economy Act 2017 \(c. 30\)](#).
- M19** [S.I. 1997/1160](#). There are amendments to the Regulations which are not relevant to this Order.
- M20** [S.I. 2015/376](#).
- M21** [1981 c. 67](#). Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the [Planning and Compensation Act 1991 \(c. 34\)](#). There are other amendments to the 1981 Act which are not relevant to this Order.
- M22** [2006 c. 46](#).
- M23** There are amendments to section 127 which are not relevant to this Order.
- M24** There are amendments to section 151 which are not relevant to this Order.
- M25** Section 48(3A) was inserted by section 124 of the [Local Transport Act 2008 \(c. 26\)](#).
- M26** 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 subsequently 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 \(c. 7\)](#) and [S.I. 2001/1400](#). There are other amendments to section 121A which are not relevant to this Order.
- M27** [2004 c. 18](#).
- M28** 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 \(c. 7\)](#).

## PART 2

### PRINCIPAL POWERS

#### Development consent granted by the Order

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.

#### Parameters of authorised development

4. The authorised development must be carried out within the parameters shown and described on the parameters plans and subject to those parameters 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 bridges, deviate vertically from the levels shown highlighted yellow on the bridge plans to a maximum of 0.5 metres upwards or 1.0 metres downwards; and
- (c) in respect of the railway works comprised in Works Nos. 1 and 2, deviate vertically from the levels shown on the rail section plans to a maximum of 1.5 metres upwards or 2.5 metres downwards.

### **Authorisation of use**

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 those parts of the authorised development comprised in Works Nos. 1 to 3 for the purposes of a rail freight terminal and warehousing for any purposes for which such parts of the authorised development is designed and for any purposes ancillary to those purposes.

### **Maintenance of authorised development**

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

(2) Paragraph (1) does not extend 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.

### **Benefit of Order**

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

(2) Four Ashes Limited have 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) Four Ashes Limited have 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(9) 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.

## **PART 3**

### **STREETS**

#### **Street works**

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position;



- (e) construct bridges and tunnels;
- (f) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (g) alter the level or increase the width of such kerb, footway, cycle track or verge;
- (h) reduce the width of the carriageway of the street;
- (i) make and maintain crossovers and passing places; and
- (j) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (i).

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

(3) In respect of streets for which Highways England is the street authority, the street works must be carried out in accordance with the relevant provisions of Part 2 of Schedule 13 (protective provisions).

(4) In respect of streets for which the local highway authority is the street authority, the street works must be carried out in accordance with the relevant provisions of Part 3 of Schedule 13.

#### **Power to alter layout, etc., of streets**

**9.**—(1) Subject to paragraph (2), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within Works No. 5 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, footpath, 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 highway authority which has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

#### **Permanent stopping up of streets**

**10.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up permanently the street specified in column (2) Part 1 of Schedule 4 (streets to be permanently stopped up) to the extent specified in column (3) of that Part of that Schedule.

(2) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up permanently the street specified in column (2) Part 2 of Schedule 4 to the extent specified in column (3) of that Part of that Schedule.

(3) No street specified in column (2) of Parts 1 and 2 of Schedule 4 is to be wholly or partly stopped up under this article unless—

*Status: Point in time view as at 21/10/2020.*

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- (a) the new street to be substituted for it, which is specified in column (4) of Parts 1 and 2 of that Schedule, has been completed to the reasonable satisfaction of the relevant street authority and is open for use; or
  - (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).
- (4) Where a street has been stopped up under paragraph (1) of 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.
- (5) 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.
- (6) This article is subject to article [F<sup>4</sup>36] (apparatus and rights of statutory undertakers in stopped up streets).
- (7) The undertaker must provide to the local highway authority within 28 days of the stopping up of a length of street specified in column (2) of Parts 1 and 2 of Schedule 4 a plan to a scale of not less than 1:500 showing the extent of the stopping up.

#### Textual Amendments

- F4** Word in [art. 10\(6\)](#) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, 2(3)

#### Temporary stopping up of streets

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

## Public rights of way – creation and stopping up

12.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of that part of the authorised development comprised in Work Nos. 1, 3 and 6 stop up the public right of way specified in column (2) of Part 1 of Schedule 5 (public rights of way) to the extent specified in column (3) of that Part of that Schedule.

(2) The undertaker must provide to the relevant highway authority within 28 days of the stopping up of the length of public right of way specified in column (3) of Part 1 of Schedule 5 a plan to a scale of not less than 1:500 showing the extent of the stopping up.

(3) If at any time the land shown coloured purple between points A and B on sheet 7 of the access and rights of way plans is the subject of a modification order under section 53 (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981<sup>M29</sup> the effect of which is to give the land status as a public right of way, then by operation of this paragraph, in connection with the carrying out of the authorised development the public right of way is to be stopped up without the need for any further order.

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

### Marginal Citations

**M29** 1981 c. 69. Section 53 was amended by paragraph 1 of Part 1 of Schedule 5 to the [Countryside and Rights of Way Act 2000 \(c. 37\)](#), [section 70\(1\)](#) of the [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#) and section 26(1) and (2) of, and paragraphs 1, 2, 9 and 10 of Schedule 7 to, the [Deregulation Act 2015 \(c. 20\)](#).

## Accesses

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

(2) The 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 shown in the highway general arrangement plans and carried out in accordance with the relevant provisions of Parts 2 and 3 of Schedule 13 (protective provisions).

(3) If either a <sup>F5</sup>... highway authority or street authority who has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent.

(4) The private means of access as set out in column (2) of Part 1 of Schedule 6 (private means of access) 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.

(5) The private means of access as set out in column (2) of Part 2 of Schedule 6 may be removed by the undertaker and if removed must be replaced by the means of access as set out 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.

*Status: Point in time view as at 21/10/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)*

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

#### Textual Amendments

**F5** Word in [art. 13\(3\)](#) omitted (21.10.2020) by virtue of [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, **2(4)**

#### Maintenance of highway works

**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 paragraphs 7 and 8 of Part 3 of Schedule 13 the highway works to which that certificate relates will be maintained by 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 final certificate under paragraph 7 or 8 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” shall be given its ordinary meaning when applied to highways.

#### Classification of A5/A449 link road

**15.**—(1) The A5/A449 link road described in Schedule 7 (classification of new highways) is to be—

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

as if such classification has been made under section 12(3) (classified roads) of the 1980 Act.

(2) From the date of the opening of the A5/A449 link road to the public, Staffordshire County Council will be the highway authority for that highway.

#### Speed limits

**16.**—(1) Upon the opening of the length of highway specified Part 1 of Schedule 8 (speed limits) no person is to drive any motor vehicle at a speed exceeding 30 miles per hour in the lengths of road identified in column (2) of that Part of that Schedule.

(2) Upon the opening of the length of highway specified in Part 2 of Schedule 8 no person is to drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of road identified in column 2 of that Part of that Schedule.

(3) Upon the opening of the length of highway specified in Part 3 of Schedule 8 no person is to drive any motor vehicle at a speed exceeding 50 miles per hour in the lengths of road identified in column (2) of that Part of that Schedule.

(4) Upon the opening of the length of highway specified in Schedule 8 no person is to drive any motor vehicle at a speed exceeding 60 miles per hour in the lengths of road identified in column (2) of that Part of that Schedule.

(5) Subject to the provisions of this article and the consent of the relevant traffic authority, such consent not to be unreasonably withheld but which 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 roads 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<sup>M30</sup> when used in accordance with regulation 3(5) of those Regulations.

#### **Marginal Citations**

**M30** [S.I. 2011/935](#).

### **Traffic Regulation**

17.—(1) The orders referred to in columns (1) and (2) of Part 1 of Schedule 9 (traffic regulation) are revoked or amended as set out in column (3) of Part 1 of Schedule 9 upon the event listed in column (4) of that Part of that Schedule 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 of the relevant traffic authority, such consent not to be unreasonably withheld but which 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 road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

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

*Status: Point in time view as at 21/10/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)*

- (3) The undertaker must not exercise the powers in paragraph (2) unless it has—
- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority; and
  - (b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 7 days of the relevant traffic authority's receipt of notice of the undertaker's intention under sub-paragraph (a).
- (4) Any prohibition, restriction or other provision made by the undertaker under paragraph (2) 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 authority in whose area the road is situated as an order under section 32 <sup>M31</sup> (power of local authorities to provide parking places) of the 1984 Act; 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 (2) 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.
- (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 (2) that is accompanied by all relevant information the relevant traffic authority is deemed to have given consent.

#### Marginal Citations

**M31** 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.

#### Clearways, no waiting and limited waiting

**18.—**(1) Subject to paragraphs (5) and (6), following the event specified in column (4) of Part 2 of Schedule 9 (traffic regulation), 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 that Part of that Schedule, other than a lay-by.

(2) Subject to paragraphs (5) and (7) following the event specified in column (4) of Part 2 of Schedule 9 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 verge adjacent to any part of a carriageway specified in columns (1) and (2) of that Part of that Schedule where such prohibition is indicated as applying in column (3) of that Part of that Schedule.

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

(4) Subject to paragraph (5) following the event specified in column (3) of Part 4 of Schedule 9, 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 for any longer than two hours or return within one

hour on any part of the carriageway specified in columns (1) and (2) of that Part of that Schedule or its adjacent verge.

(5) Nothing in paragraphs (1) to (4) 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 telecommunications apparatus as defined in Schedule 3A<sup>M32</sup> (the electronic communications code) to the Communications Act 2003; 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>M33</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>M34</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.

(6) Nothing in paragraph (1) applies to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispersed.

(7) Nothing in paragraph (2) applies—

(a) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary—

(i) to enable a person to board or alight from the vehicle;

(ii) to enable goods to be loaded on to or unloaded from the vehicle; or

(iii) to enable goods to be sold from the vehicle provided such goods are immediately delivered at, or taken into, premises adjacent to the vehicle from which sale is effected;

(b) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary to enable that vehicle, if it cannot conveniently be used for such purpose without waiting on such verge, to be used in connection with any building operation or demolition, the removal of any obstruction or potential obstruction to traffic, the maintenance, improvement or reconstruction of such verge or of a carriageway immediately adjacent to such verge or the erection, laying, placing, maintenance, testing,

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alteration, repair or removal of any structure, works or apparatus in, on, under or over that verge or carriageway; or

- (c) to a vehicle waiting on any verge specified in paragraph (2) while any gate or other barrier at the entrance to premises to which the vehicle requires access or from which it has emerged is opened or closed.

(8) Paragraphs (1) to (7) have effect as if made by a traffic regulation order under the 1984 Act and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

#### Marginal Citations

**M32** [Schedule 3A](#) was inserted by section 4(2) of, and Schedule 1 to, the [Digital Economy Act 2017 \(c. 30\)](#).

**M33** [1991 c. 56](#).

**M34** [2000 c. 26](#).

#### Motor vehicle restrictions

**19.**—(1) No person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to proceed along any part of a road specified in columns (1) and (2) of Part 5 of Schedule 9 (traffic regulation) in the manner specified in column (3) of that Part of that Schedule.

(2) 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 along the parts of road specified in columns (1) and (2) of Part 6 of Schedule 9 in a direction other than that specified in relation to that road in column (3) of that Part of that Schedule.

(3) Paragraphs (1) and (2) have effect as if made by a traffic regulation order under the 1984 Act, and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

#### Agreements with highway authorities

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

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

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

- (a) make provision for the relevant highway authority to carry out any function under this Order which relates to the highway in question;



- (b) include an agreement between the undertaker and the relevant highway authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## PART 4

### SUPPLEMENTAL POWERS

#### Discharge of water

21.—(1) Subject to paragraphs (3) to (5) 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>M35</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.

(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 considers appropriate such consent not to be unreasonably withheld or delayed.

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

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

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

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016 <sup>M36</sup>.

(8) 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>M37</sup> have the same meaning as in that Act.

(9) If a person who has received an application for consent under paragraphs (3) or (4) or approval under paragraph (5)(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.

*Status: Point in time view as at 21/10/2020.*

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### Marginal Citations

**M35** 1991 c. 56. Section 106 was amended by section 35(1) and (8) and section 43(2) of, and Schedule 2 to, the [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [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 \(c. 29\)](#).

**M36** [S.I. 2016/1154](#), amended by [S.I. 2017/1012](#), [S.I. 2017/1075](#), [S.I. 2018/110](#), [S.I. 2018/428](#), [S.I. 2018/575](#), [S.I. 2018/721](#), [S.I. 2018/1216](#) and [S.I. 2018/1227](#).

**M37** 1991 c. 57.

### Authority to survey and investigate the land

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

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

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

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

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

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

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

but such consent must not be unreasonably withheld.

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

(6) If either a <sup>F6</sup>... highway authority or a street authority who has received an application for consent under paragraph (4) fails to notify the undertaker of its decision within 42 days of receiving the application submitted with all relevant information the authority is deemed to have granted the consent.

**Textual Amendments**

- F6** Word in art. 22(6) omitted (21.10.2020) by virtue of [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, 2(5)

## PART 5

### POWERS OF ACQUISITION

#### Guarantees in respect of payment of compensation

**23.**—(1) The undertaker must not exercise a power conferred by articles 24 (compulsory acquisition of land) to 27 (power to override easements and other rights) or 32 (statutory undertakers and operators of the electronic communications code network) to 35 (temporary use of land for maintaining the authorised development) unless a guarantee or alternative form of security in respect of the [<sup>F7</sup>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 local planning authority; but such approval must not be unreasonably withheld.

(3) The undertaker must provide the local planning authority with such information as the local 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 local 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 shall be treated as 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**

- F7** Words in art. 23(1) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, 2(6)

#### Compulsory acquisition of land

**24.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, 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<sup>M38</sup> (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

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*Changes to legislation: There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)*

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).

#### **Marginal Citations**

**M38** Section 134 was amended by section 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](#).

### **Compulsory acquisition of rights**

**25.**—(1) The undertaker may acquire compulsorily the existing rights 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, all rights, trusts and incidents to which the land over which any new right is, or rights are, acquired was previously subject are discharged, so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8<sup>M39</sup> (other provisions as to divided land) of, and Schedule 2A<sup>M40</sup> (counter-notice requiring purchase of land not in notice to treat) 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) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

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

(7) 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.

### Marginal Citations

**M39** Section 8 was amended by paragraphs 1 and 2 of Part 1 of Schedule 17 to the [Housing and Planning Act 2016 \(c. 22\)](#) and [S.I. 2009/1307](#).

**M40** Schedule 2A was inserted by paragraphs 1 and 3 of Schedule 17 to the [Housing and Planning Act 2016 \(c. 22\)](#).

### Private rights

**26.**—(1) Subject to the provisions of this article, all private rights 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>M41</sup> (power of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights 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 over land within the limits of land which may be acquired shown on the land plans are extinguished on the appropriation of the land by the undertaker.

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152<sup>M42</sup> (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<sup>M43</sup> (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 acquisition of rights over or affecting the land;
  - (ii) the undertaker's appropriation of the land;
  - (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; or

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*Changes to legislation: There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)*

- (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.

#### **Marginal Citations**

- M41** 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).
- M42** Section 152 was amended by [S.I. 2009/1307](#).
- M43** Section 138 was amended by section 23(4) of the [Growth and Industry Act 2013 \(c. 27\)](#) and [S.I. 2017/1285](#).

#### **Power to override easements and other rights**

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, or a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(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 section 10<sup>M44</sup> (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—

“authorised activity” means—

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

“statutory undertakers” does not include operators of the electronic communications code network.

#### **Marginal Citations**

**M44** [Section 10](#) was amended by [S.I. 2009/1307](#).

### **Compulsory acquisition of land – incorporation of the mineral code**

**28.**—(1) Subject to paragraph (2), Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 <sup>M45</sup> 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.

(2) Paragraph (1) does not apply to the plots shown coloured pink, hatched pink or coloured orange on the land plans.

#### **Marginal Citations**

**M45** [1981 c. 67](#).

### **Time limit for exercise of authority to acquire land and rights compulsorily**

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 <sup>M46</sup> (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act).

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

(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.

#### Marginal Citations

**M46** Section 4 was amended by sections 184, 185 and 199(2) of, and paragraphs 1 and 2 of Part 1 of Schedule 13 to, the [Housing and Planning Act 2016 \(c. 22\)](#).

#### Modification of Part 1 of the 1965 Act

**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) <sup>M47</sup> (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 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 29 (time limit for exercise of authority to acquire land and rights compulsorily) of the West Midlands Rail Freight Interchange Order 2020 <sup>M48</sup> ”.

(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 “[<sup>F8</sup>article 29 (time limit for exercise of authority to acquire land and rights compulsorily)] of the West Midlands Rail Freight Interchange Order 2020”.

(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) at the end insert—

## “PART 4

### 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 West Midlands Rail Freight Interchange Order 2020.”

#### Textual Amendments

**F8** Words in art. 30(3) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, 2(7)

#### Marginal Citations

**M47** Section 4A(1) was inserted by section 202(1) of the [Housing and Planning Act 2016 \(c. 22\)](#).

**M48** [S.I. 2020/511](#).

#### Application of the 1981 Act

**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)<sup>M49</sup> (earliest date for execution of declaration) omit the words from “, and this subsection” to the end.
- (5) Omit section 5A<sup>M50</sup> (time limit for general vesting declaration).
- (6) In section 5B(1)<sup>M51</sup> (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 and rights compulsorily) of the West Midlands Rail Freight Interchange Order 2020 ”.
- (7) In section 6(1)(b)<sup>M52</sup> (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 (notice of authorisation of compulsory acquisition) of the Planning Act 2008 ”.
- (8) In section 7(1)(a)<sup>M53</sup> (constructive notice to treat), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1<sup>M54</sup> (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 [F<sup>9</sup>article 30 (modification of Part 1 of the 1965 Act)] to the compulsory acquisition of land and rights under this Order.

#### Textual Amendments

- F9** Words in [art. 31\(10\)](#) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, **2(8)**

#### Marginal Citations

- M49** Section 5 was amended by section 183 of, and Schedule 15 to, the [Housing and Planning Act 2016 \(c. 22\)](#).
- M50** Section 5A was inserted by section 182(2) of the [Housing and Planning Act 2016 \(c. 22\)](#).
- M51** Section 5B(1) was inserted by section 202(2) of the [Housing and Planning Act 2016 \(c. 22\)](#).
- M52** 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 \(c. 11\)](#).
- M53** 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 \(c. 22\)](#).
- M54** Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the [Housing and Planning Act 2016 \(c. 22\)](#).

### Statutory undertakers and operators of the electronic communications code network

- 32.** The undertaker may, subject to Schedule 13 (protective provisions)—
- (a) extinguish the rights of statutory undertakers and operators of the electronic communications code network within the Order limits; and

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- (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.

### **Rights under or over streets**

**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 the strategic road network.

### **Temporary use of land for carrying out the authorised development**

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

(a) enter into 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<sup>M55</sup> (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; and

(c) construct and use temporary works (including the provision of means of access) and buildings on that land.

(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 a 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 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—
- (a) remove all temporary works (including temporary accesses to the public highway);
  - (b) restore the land affected by temporary works to the reasonable satisfaction of the owners of the land;
  - (c) reinstate the land affected by any temporary highway access to the reasonable satisfaction of the relevant highway authority,

save that the undertaker is not required to replace a building removed under this article.

(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 10(2) (further provision as to compensation for injurious affection) of the 1965 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 of land under this Order by virtue of section 125<sup>M56</sup> (application of compulsory acquisition provisions) of the 2008 Act.

#### Marginal Citations

- M55** 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](#).
- M56** Section 125 was amended by paragraph 17 of Schedule 16 to the [Housing and Planning Act 2016 \(c. 22\)](#).

### Temporary use of land for maintaining the authorised development

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

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- (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 shall be 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—
- (a) remove all temporary works (including temporary access to the public highway);
  - (b) restore the land affected by temporary works to the reasonable satisfaction of the owners of the land;
  - (c) reinstate the land affected by any temporary 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 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 10(2) of the 1965 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<sup>M57</sup> (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 (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.

### Marginal Citations

**M57** 1965 c. 56. 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 13 of Schedule 23 to, the [Tribunal, Courts and Enforcement Act 2007](#) (c. 15).

### Apparatus and rights of statutory undertakers in stopped up streets

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

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

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

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

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

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

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

and the placing of that new apparatus involves additional costs which would not have been incurred if the apparatus had been of the same type, capacity or 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)—

- (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

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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.

### **No double recovery**

**37.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

#### **Operation and use of railways**

**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.

#### **Operational land for the purposes of the 1990 Act**

**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.

#### **Charges**

**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.

#### **Felling or lopping of trees and removal of hedgerows**

**41.—(1)** Subject to sub-paragraph (4) the undertaker may fell or lop any tree, shrub or hedgerow near 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 comply with British Standard 3998:2010 “Tree Work Recommendations”, 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 this article do not apply without the agreement of the local planning authority to any tree or hedgerow identified to be retained in the landscaping scheme approved under requirement 12 (ecological [<sup>F10</sup>mitigation and management plan]).

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

(6) The provisions of this article do not apply to any tree or hedgerow planted as part of an agreed landscaping or ecological mitigation plan.

#### **Textual Amendments**

**F10** Words in art. 41(4) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, 2(9)

#### **Protective provisions**

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

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

43.—(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 for the avoidance of doubt the approval of details or plans under the requirements) such approval or agreement must not be given if it would permit development outside of the parameters of the authorised development referred to in article 4 (parameters of authorised development) or would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.

(2) When any details, plans or other matters have been agreed or approved by the local planning authority under a requirement, or the relevant highway authority under a requirement or Parts 2 and 3 of Schedule 13, then they may subsequently be amended by agreement with the local planning authority or relevant highway authority as the case may be provided that no amendments to those details, plans or other matters may be approved where such amendments would permit development outside of the parameters of the authorised development referred to in article 4 (parameters of authorised development) or would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.

(3) Where a consent, agreement or approval is required or requested by the undertaker under a requirement then the procedure set out in Part 3 of Schedule 2 (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.

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## Disapplication, application and modification of legislative provisions

44.—(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) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw-making powers of the authority) to the Water Resources Act 1991 <sup>M58</sup>;
- (b) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991 <sup>M59</sup> in relation to watercourses for which Staffordshire County Council is the drainage board concerned;
- (c) section 32 <sup>M60</sup> (variation of awards) of the Land Drainage Act 1991;
- (d) the provisions of any byelaws made under section 66 <sup>M61</sup> (powers to make byelaws) of the Land Drainage Act 1991; and
- (e) section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981 <sup>M62</sup>.

(2) The provisions of the Neighbourhood Planning Act 2017 <sup>M63</sup> 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 <sup>M64</sup>.

(4) Regulation 4 (requirement for consent) of the 2007 Regulations does not apply to any advertisement approved by the local planning authority under requirement 4 (detailed design approval).

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

(6) Sections 158(1) and (2) (nuisance: statutory authority) of the 2008 Act do not apply to the authorised development.

(7) 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.

(8) Paragraphs (1) to (7) 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.

### Marginal Citations

**M58** 1991 c. 57. Paragraph 5 was amended by section 106 of the Natural Environmental and Rural Communities Act 2006, section 31 of, and paragraphs 40 and 49 of Schedule 2 to the [Flood and Water Management Act 2010 \(c. 29\)](#), and sections 84 and 146(1) of, and paragraph 3 of Schedule 11 to, the [Marine and Coastal Access Act 2009 \(c. 23\)](#). Paragraph 6 was amended by section 105 of, and paragraph 6 of Schedule 15 to, the [Environment Act 1995 \(c. 25\)](#), [sections 233\(1\), 224 and 321](#) of, and



- paragraphs 20 and 24 of Schedule 16 and Part 5(b) of Schedule 22 to, the [Marine and Coastal Access Act 2009 \(c. 23\)](#). Paragraph 6A was inserted by section 103(3) of the [Environment Act 1995 \(c. 25\)](#).
- M59** 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 \(c. 29\)](#).
- M60** Section 32 was amended by [S.I. 2013/755](#).
- M61** 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 \(c. 21\)](#).
- M62** 1981 c. 69. Section 28E was amended by section 105(1) of, and paragraphs 79 and 80 of Part 1 of Schedule 11 to, the [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#).
- M63** 2017 c. 20.
- M64** 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 \(c. 23\)](#).

### Certification of plans and documents

**45.**—(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 15 (certification of 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 plans or document of which it is a copy.

### Service of notices

**46.**—(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>M65</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.

*Status: Point in time view as at 21/10/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)*

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

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

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

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

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

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

(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.

#### **Marginal Citations**

**M65** 1978 c. 30.

#### **Arbitration**

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

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

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

Signed by authority of the Secretary of State

Department for Transport

*Susan Anderson*  
Head of the Transport and Works Act Unit

**Status:** Point in time view as at 21/10/2020.  
**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

## SCHEDULES

### SCHEDULE 1

Article 2

#### AUTHORISED DEVELOPMENT

### PART 1

#### NSIP: THE CONSTRUCTION OF A RAIL FREIGHT INTERCHANGE

**In the County of Staffordshire and the District of South Staffordshire—**

#### **Works No. 1**

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

The construction of a new railway line from the rail freight terminal (Works No. 2) to connect with the existing West Coast Main Line Loop railway line the general arrangement of which is shown on the illustrative arrangement of railway alignment plan and including—

- (a) construction of a new railway track and associated rail infrastructure;
- (b) formation of new railway embankments and all necessary earthworks and drainage;
- (c) new arrival and departure rail tracks adjacent to the existing railway;
- (d) the alteration of the existing railway infrastructure including points and signals;
- (e) acoustic and security fencing;
- (f) temporary drainage lagoon;
- (g) the removal of telecommunications mast;
- (h) the removal of Footpath 29 footbridge over the West Coast Main Line Loop railway;
- (i) works to accommodate the removal of masonry bridge (part of existing Gravelly Way) over the West Coast Main Line Loop railway;
- (j) the removal and replacement of pipework and boreholes associated with the remediation strategy for the SI land;
- (k) the stopping up of Gravelly Way to the east and west of the existing railway bridge;
- (l) the stopping up of the length of Footpath 29 shown on the access and rights of way plans;
- (m) the construction of new maintenance access points to the east and west of the West Coast Main Line Loop railway including interface with Works No. 6; and
- (n) the construction of a new culvert under the rail lines to connect services either side of the West Coast Main Line Loop railway.

## **Works No. 2**

Within the area of land described on the works plans as Works No. 2—

The construction of a rail freight terminal, the general arrangement of which is shown on the rail terminal – illustrative expanded rail terminal layout plan, to connect with the rail infrastructure described in Works No. 1 including—

- (a) earthworks to achieve a terminal plateau;
- (b) access and circulation roads;
- (c) an intermodal rail freight loading/unloading terminal including—
  - (i) rail sidings to load/unload freight;
  - (ii) freight storage areas; and
  - (iii) gantry cranes and reach stackers;
- (d) railtracks and associated rail infrastructure;
- (e) drainage and attenuation ponds;
- (f) security fencing;
- (g) cripple sidings, rail freight terminal refuelling and maintenance areas;
- (h) alteration of the existing rail infrastructure including signalling;
- (i) terminal entry and exit gates, loading lanes, internal roads, gatehouses and vehicle/cycle parking areas;
- (j) rail freight terminal gateway/office including staff and visitor welfare facilities;
- (k) storage and workshop buildings;
- (l) the removal and replacement of pipework and boreholes associated with the remediation strategy for the SI land;
- (m) works to accommodate removal of bridge over West Coast Main Line Loop railway; and
- (n) the stopping up of Gravelly Way.

## **Works No. 3**

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

(1) The construction of rail served warehousing (including ancillary offices and other buildings) within the areas annotated as Zones A1 to A7 including—

- (a) earthworks to provide development plateaus;
- (b) construction of development plateaus;
- (c) warehouses and ancillary buildings such as gatehouses;
- (d) service yards and vehicle/cycle parking;
- (e) rail infrastructure within Zones A1 and A2 to facilitate rail connected warehousing;
- (f) vehicle access routes;
- (g) solar energy provision;
- (h) vehicle maintenance units including washing and refuelling;

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

- (i) vehicle electricity charging facilities;
  - (j) container storage;
  - (k) removal of telecommunication masts;
  - (l) the removal and replacement of pipework and boreholes associated with the remediation strategy for the SI land;
  - (m) drainage and attenuation structures;
  - (n) on plot landscaping and bunding;
  - (o) signage; and
  - (p) the stopping up of the length of Footpath 29 shown on the access and rights of way plans.
- (2) The demolition of existing farmhouses and associated outbuildings, other buildings and structures.

#### **Works No. 4**

Within the area of land described on the works plans as Works No. 4—

The A5/A449 link road the general arrangement of which is shown on the highway general arrangement plans and bridge plans including—

- (a) footways and cycleways;
- (b) construction of a new three arm roundabout on the A5;
- (c) construction of a left in and left out junction with Harrisons Lane;
- (d) construction of a new four arm roundabout on the A449;
- (e) new bridges over the railway and canal as shown on the bridge plans;
- (f) works comprising the interface with Works Nos. 5 and 7;
- (g) removal of existing laybys on the A5;
- (h) closure of the existing accesses on the A5 as shown on the access and rights of way plans;
- (i) upgrading of existing footway on the north side of the A5 to a cycleway;
- (j) bus stops and bus laybys on the A5/A449 link road;
- (k) bus laybys on the A449;
- (l) removal of bridge over West Coast Main Line Loop railway;
- (m) street lighting;
- (n) construction of new maintenance access points to the rail lines on the east and west (the latter through the rail terminal) of the West Coast Main Line Loop railway;
- (o) drainage and attenuation structures;
- (p) diversion and culverting of the existing canal feeder drain; and
- (q) installation of new service crossings below the public highway.

#### **Works No. 5**

Within the area of land described on the works plans as Works No. 5—

(1) The construction of infrastructure the general arrangement of which is shown on the highway general arrangement plans including—

- (a) principal on site private estate roads and associated junctions;
- (b) works comprising the interfaces with Works Nos. 4 and 7;
- (c) footways and cycleways;
- (d) signage;
- (e) street lighting; and
- (f) bus stop.

(2) The demolition of buildings and structures.

## PART 2

### ASSOCIATED DEVELOPMENT

Associated development within the meaning of section 115(2) <sup>M66</sup> (development for which development consent may be granted) of the 2008 Act comprising—

#### Marginal Citations

**M66** Section 115(2) was amended by section 160(1) and (3) of the Housing and Planning Act 2016 (s. 22) and section 43(1) and (2) of the Wales Act 2017 (c. 4).

#### Marginal Citations

**M66** Section 115(2) was amended by section 160(1) and (3) of the Housing and Planning Act 2016 (s. 22) and section 43(1) and (2) of the Wales Act 2017 (c. 4).

**In the County of Staffordshire and the District of South Staffordshire—**

#### **Works No. 6**

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

The provision of structural landscaping and two community parks including—

- (a) a community park in the location identified as Croft Lane Community Park on the parameters plans;
- (b) a community park in the location identified as Calf Heath Community Park on the parameters plans;
- (c) earthworks including the creation of screening bunds;
- (d) drainage and attenuation structures;
- (e) boundary treatments including acoustic fencing;

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- (f) habitat creation;
- (g) canal enhancement;
- (h) demolition of buildings and structures;
- (i) retention of existing woodland;
- (j) vehicle and pedestrian accesses to Zones A2 to A7;
- (k) removal of two steel pipe bridges and a concrete bridge over the canal;
- (l) the removal and replacement of pipework and boreholes associated with the remediation strategy for the SI land;
- (m) the stopping up of the length of Footpath 29 shown on the access and rights of way plans;
- (n) the stopping up of Gravelly Way and landscaping/highway verge associated with the revised highway arrangements to Four Ashes industrial area;
- (o) closure of private accesses as shown on the access and rights of way plans (Document 2.3);
- (p) vehicle access and parking and cycle parking facilities within community parks;
- (q) cycle track adjacent to Zone A6;
- (r) new public car parks for the community parks;
- (s) diversion of the existing land drainage network;
- (t) interface with Works Nos. 1 and 10a for the construction of new maintenance access points to the east of the West Coast Main Line Loop railway;
- (u) the construction of culverts under the A449 adjacent to Zone A1 and, if necessary, adjacent to Zone A2 as an alternative to use of the existing culvert situated adjacent to Zone A2, under Vicarage Road between Zone A5b and A7c and under Straight Mile south of Zone A7c to connect services either side of the public highway;
- (v) the construction of a new culvert under the West Coast Main Line Loop railway, and under the Staffordshire and Worcestershire Canal to connect services either side of the rail lines and the canal; and
- (w) construction of new drainage outfalls to Staffordshire and Worcestershire Canal and the existing ditch along Woodlands Lane.

## **Works No. 7**

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

Works to the public highway the general arrangement of which is shown on the highway general arrangement plans including—

- (a) upgrading of the existing footway on the north side of the A5 to a cycleway/footway;
- (b) works of improvement to the A449 including—
  - (i) removal of the A449/Station Drive right turn lane;
  - (ii) upgrading the cycleway/footway along the east side of the A449 from Station Drive to the A5; and
  - (iii) laybys on the west and east side of the A449 between Gravelly Way and the A5;
- (c) realignment of Vicarage Road and provision of access roundabout;



- (d) the closure of three gaps in the central reservation on the A449 between the A5 and Gravelly Way;
- (e) closure of the existing access on the A449 as shown on the access and rights of way plans;
- (f) works comprising the interfaces with Work Nos. 4 and 5;
- (g) the addition of cycleway/footway along a length of Vicarage Road from the south-east corner of Zone A6 to the new roundabout;
- (h) provision of a pedestrian/cycle crossing point along Vicarage Road to the south west of the new access roundabout;
- (i) provision of HGV turning area on Station Drive to the west of the railway bridge;
- (j) the provision of two pedestrian/cycle crossing points along Straight Mile between Vicarage Road and Kings Road;
- (k) amendments to Crateford Lane to create a one-way road;
- (l) closure of the existing accesses on the A5 as shown on the access and rights of way plans;
- (m) upgrading of existing footway on the north side of the A5 to a cycleway;
- (n) an amended left in/left out junction to The Poplars;
- (o) improved visibility splay at the junction of Vicarage Road and Straight Mile;
- (p) footway works at junction of Straight Mile and Woodlands Lane with Kings Road including pedestrian crossing points;
- (q) installation of new service crossings below the public highway;
- (r) the construction of culverts under the A449 adjacent to Zone A1 and, if necessary, adjacent to Zone A2 as an alternative to use of the existing culvert situated adjacent to Zone A2, under Vicarage Road between Zone A5b and A7c and under Straight Mile south of Zone A7c to connect services either side of the public highway;
- (s) signage; and
- (t) street lighting.

### **Works No. 8**

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

(1) Conversion of Gravelly Way Farm buildings to use for the purposes of estate management offices, training facilities, meeting rooms, amenity and welfare facilities, with ancillary parking and landscaping.

(2) Provision of buildings for the storage of estate management plant and machinery, and related workshop facilities.

### **Works No. 9a**

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

- (a) the removal and replacement of the existing 132kv tower with a new terminal tower;
- (b) restringing to the new terminal tower;
- (c) installation of underground cabling to connect into the underground cabling in Works No. 4; and

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- (d) a temporary access and set down and assembly area for the demolition of existing tower and construction of new tower to include a temporary office and welfare facility.

#### **Works No. 9b**

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

- (a) the removal and replacement of the existing 132kv tower with a new terminal tower;
- (b) restringing to the new terminal tower;
- (c) installation of underground cabling to connect into the underground cabling in Works No. 6; and
- (d) a temporary access and set down and assembly area for the demolition of existing tower and construction of new tower to include a temporary office and welfare facility.

#### **Works No. 10a**

Within the area of land described on the works plans as Works No. 10a, the provision of revised access arrangements for the SI facility the general arrangement of which is shown on the highway general arrangement plans incorporating access also to Zone A3 and Works No. 8 including—

- (a) an underpass under the A5/A449 link road;
- (b) interface with Works Nos. 1 and 6 for the construction of new maintenance access points to the east of the West Coast Main Line Loop railway;
- (c) interface with Works No. 3 (Zone A3);
- (d) interface with Works No. 4;
- (e) interface with Works No. 8;
- (f) interface with Works No. 10b;
- (g) at grade junction with the A5/A449 link road;
- (h) footways/cycleways;
- (i) footpaths/cycle tracks;
- (j) signage;
- (k) street lighting; and
- (l) the construction of new maintenance access points to the east of the West Coast Main Line Loop railway.

#### **Works No. 10b**

Within the area of land described on the works plans as Works No. 10b and as shown on the access and rights of way plans (Document 2.3C), the provision of revised access arrangements to Four Ashes industrial area the general arrangement of which is shown on the highway general arrangement plans including—

- (a) the provision of at grade access from the A5/A449 link road leading to an amended roundabout with new accesses off to adjacent land;
- (b) closure of part of Gravelly Way to all traffic;

- (c) retention of use of part of Gravelly Way to public cycle path and footpath proceeding under the A5/A449 link road to connect with the canal towpath;
- (d) footpath/cycle track adjacent to the west of the new road leading to the amended roundabout; and
- (e) the provision of footpath alongside Works No. 8, the access to Works No. 8 and Works No. 10a connecting to the footway/cycle way provided as part of Works No. 4.

## **Works No. 11**

Within the area of land described on the works plans as Works No. 11, the provision of improved access to Avenue Cottages from the A5 including the provision of a turning area the general arrangement of which is shown on the highway general arrangement plans.

## **Further works**

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

- (1) Within the area of land described on the works plans as Works Nos. 1 to 3 the provision of—
  - (a) weighbridges;
  - (b) diversion and provision of utilities services including underground cabling to connect into Work Nos. 9a and 9b; and
  - (c) such other works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development.
- (2) Within the area of land described on the works plans as Works Nos. 1 to 6 and Works No. 8 the provision of—
  - (a) bunds, embankments, swales, landscaping and boundary treatments, earthworks and earthwork retaining structures;
  - (b) the provision of footways, cycle tracks, permissive cycle tracks, bridleways and footpath linkages;
  - (c) water supply works, foul drainage provision, foul pumping stations, surface water management systems, balancing ponds (surface and underground), attenuation and culverting;
  - (d) connections to mains services and provision of utilities infrastructure including primary and secondary substations and pressure reducing stations;
  - (e) diversion and provision of utilities services including underground cabling to connect into Work Nos. 9a and 9b;
  - (f) the relocation/erection of telecommunications masts following the removal thereof as part of Works Nos. 1 and 3;
  - (g) demolition of surface structures;
  - (h) fencing and boundary treatments;
  - (i) temporary concrete batching plants;
  - (j) temporary construction compounds and materials and aggregate store;

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- (k) lighting;
  - (l) CCTV and vehicle monitoring equipment; and
  - (m) such other works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development.
- (3) Within the area of land described on the works plans as Works Nos. 4, 5, 7, 10a, 10b and 11 the provision of—
- (a) fencing;
  - (b) surface water drainage works;
  - (c) landscaping and boundary treatments;
  - (d) earthworks and earthwork retaining structures;
  - (e) pavements, surface treatments, kerbs and channels;
  - (f) traffic signs, traffic signals and road markings;
  - (g) diversion and provision of utilities services including underground cabling to connect into Work Nos. 9a and 9b;
  - (h) temporary earthworks material stockpiles; and
  - (i) such other works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development.
- (4) Within the area of land described on the works plans as Works Nos. 1, 2, 3, 4, 6, 10a and 10b the stopping up of the public right of way shown coloured purple on sheet 7 of the access and rights of way plans if added to the definitive map pursuant to an order under section 53 (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981.

## SCHEDULE 2

Article 2

### REQUIREMENTS

## PART 1

### GENERAL REQUIREMENTS

#### Interpretation

1. In this Part of this Schedule unless the context requires otherwise—

“demolition and construction traffic management plan” means the document of that description contained in appendix N of technical appendix 15.1 of the environmental statement;

“design and access statement” means the document of that description referred to in Schedule 15 (certification documents) and certified by the Secretary of State as the design and access statement for the purposes of this Order;

“development zone parameters plan” means the plans of that description identified as document 2.5 and included in the parameters plans;

“flood risk assessment” means the document of that description contained in technical appendix 16.1 of the environmental statement;

“framework ecological mitigation and management plan” means the document of that description contained in technical appendix 10.4 of the environmental statement;

“green infrastructure parameters plan” means the plans of that description identified as document 2.7 and included in the parameters plans;

“lighting strategy and lighting impact assessment” means the document of that description contained in technical appendix 12.8 of the environmental statement;

“map of heritage receptors” means the document of that description contained in technical appendix 9.2 of the environmental statement;

“outline demolition and construction environmental management plan” means the document of that description contained in technical appendix 2.3 of the environmental statement;

“outline written scheme of investigation” means the document of that description contained in technical appendix 8.5 of the environmental statement;

“permissive paths” means those paths identified as such on the access and rights of way plans;

“site-wide surface water drainage strategy” means the document of that description contained in technical appendix 16.3 of the environmental statement; and

“water framework directive assessment” means the document of that description contained in technical appendix 16.2 of the environmental statement.;

### **Time limit**

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

### **Phases of development**

3.—(1) The authorised development (excluding archaeological investigation, soil movement, geotechnical or ground contamination investigation) must not commence until a written scheme setting out all the phases of the authorised development, has been submitted to and approved in writing by the local planning authority.

(2) The approved phasing scheme must include phasing details of—

- (a) earthworks;
- (b) ecological mitigation;
- (c) rail infrastructure;
- (d) roads and bridges;
- (e) surface water and foul drainage;
- (f) development plots;
- (g) landscaping, including mounding and acoustic fencing; and
- (h) mains services.

(3) The approved phasing scheme can be subject to amendment by agreement with the local planning authority.

(4) The authorised development must be carried out in accordance with the approved phasing scheme as approved in writing by the local planning authority.

### **Detailed design approval**

4.—(1) No phase of the authorised development (excluding archaeological investigation, soil movement, geotechnical or ground contamination investigation) is to commence until details of that phase have been submitted to and approved in writing by the local planning authority. The details of each phase must be in general accordance with the design principles set out in section 7 of

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the design and access statement. Following the commencement of the authorised development the design principles set out in section 7 must be reviewed, updated if necessary, and agreed with the local planning authority following the occupation of 186,000 square metres of warehousing. Any revised design principles will apply to any phase of the development which has not been the subject of discussions pursuant to sub-paragraph (3) prior to the date of agreement of the revised design principles.

(2) The details of each phase must include details of the following where they are located within that phase—

- (a) rail infrastructure and rail terminal;
- (b) embankments and mounds;
- (c) hard landscaping, cycle tracks, footpaths, bridleways and towpaths;
- (d) advertisements for which advertisement consent under the 2007 Regulations would be required were it not for the provisions of article [F1144(4)] of this Order;
- (e) surface and foul drainage;
- (f) bicycle, motorcycle and vehicle parking (including the location and quantum of electric charging points);
- (g) built development design (including external materials and sustainable energy measures) and layout;
- (h) site levels and finished floor levels;
- (i) estate roads and other highway works except where such details have already been approved pursuant to Parts 2 and 3 of Schedule 13 (protective provisions);
- (j) vehicular circulation routes;
- (k) bridges;
- (l) weighbridges;
- (m) gatehouses;
- (n) HGV parking and welfare facilities;
- (o) fencing walls and other means of enclosure (including acoustic fencing);
- (p) substations and relocated telecommunications masts; and
- (q) the location of the pedestrian crossing on the A5/A449 link road notwithstanding the detail shown in that respect on the highway general arrangement plans (in consultation with the local highway authority and with the approval of Highways England)

(3) The details of any phase including the formation of screen bunds and/or buildings within Development Zones A4a and A5a as shown on the parameters plan must include a wind tunnel or other technical assessment of the likely effect of those detailed proposals on wind characteristics at Calf Heath Reservoir and any consequential effects on the suitability of the reservoir for sailing.

(4) Prior to carrying out any wind tunnel or other technical assessment in accordance with sub-paragraph (3), the undertaker must consult with the local planning authority and the Greensforge Sailing Club as to the scope, basis and methodology of such assessment.

(5) The details of any consequential effects on the suitability of the reservoir for sailing are to be taken into account by the local planning authority in deciding whether the detailed proposals referred to in sub-paragraph (3) should be approved; and, if requested, the undertaker must provide the local planning authority with appropriate guidance on the wind tunnel or other technical assessment so as to assist them in determining their decision-making on this matter.

(6) Draft details of each phase, required to be submitted in accordance with sub-paragraph (2), must be discussed with the local planning authority prior to being submitted for approval.

(7) No part of the authorised development comprised in Works No. 8 will be undertaken until details of the size and appearance of any buildings or other structures to be erected and details of any landscaping and hard surfacing have been submitted to and approved by the local planning authority.

(8) The details of the estate roads to be constructed to provide access to warehousing within Zone A7 must have regard to the desirability of minimising the impact on and loss of the existing hedgerows.

(9) Any warehouse erected within Zone A7 (as identified on the development zones parameters plan) must be single aspect so that the warehousing provides noise screening between the service yard/loading docks and noise sensitive receptors.

(10) The authorised development must be carried out in accordance with the details as approved in writing by the local planning authority.

#### Textual Amendments

**F11** Word in Sch. 2 para. 4(2)(d) substituted (21.10.2020) by The West Midlands Rail Freight Interchange (Correction) Order 2020 (S.I. 2020/1163), arts. 1, 2(10)(a)

#### Demolition and construction environmental management plan

5.—(1) No phase of the authorised development (with the exception of the highway works which are governed by Parts 2 and 3 of Schedule 13 (protective provisions)) is to commence, including any preparatory earthworks or site levelling but excluding archaeological investigation, geotechnical or ground contamination investigation and ecological survey or mitigation works, until a demolition and construction environmental management plan (“DCEMP”) for that phase of development, drafted in accordance with the principles set out in the outline demolition and construction environmental management plan, has been submitted to and approved in writing by the local planning authority.

(2) The DCEMP for each phase must include—

- (a) details of the methods to control noise arising from construction activities including—
  - (i) proposals for monitoring of construction noise;
  - (ii) proposals for the introduction of mitigation measures or alternative working practices where the measurements exceed acceptable limits; and
  - (iii) proposals for hours of construction and deliveries to and from the site;
- (b) details of a dust management plan setting out the methods to be used to control dust and other emissions including smoke from the site;
- (c) details of all temporary fencing, temporary buildings, compound areas and parking areas including arrangements for their removal following completion of construction;
- (d) details of areas to be used for the storage of plant and construction materials;
- (e) details of construction waste management including controlled wastes;
- (f) details of the facilities to be provided for the storage of fuel, oil and other chemicals, including measures to prevent pollution;
- (g) details of lighting arrangements for construction and site security purposes;
- (h) advisory signage at public access points advising of possible hazards including the potential for sudden noise;
- (i) details of any temporary surface water management system;

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**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

- (j) details of existing and proposed landscaping which need to be protected during construction; and
  - (k) details for management of soils during the construction phases in accordance with the DEFRA Code of Practice for the Sustainable Use of Soil on Construction Sites 2009.
- (3) The DCEMP for each phase of development is to be kept under review and updated if necessary as construction proceeds. Each DCEMP must be submitted by the undertaker for approval in writing by the local planning authority and any amendments must be agreed with the local planning authority. All construction works must be carried out in accordance with the DCEMP as approved.

## Rail

6.—(1) The undertaker must comply with the requirements in Part 2 of this Schedule.

(2) No authorised development may commence until a scheme for the continued provision of access to the West Coast Main Line has been agreed by the local planning authority, in consultation with Network Rail. Such a scheme is to include the specification of and timings for Network Rail's temporary and permanent access to the West Coast Main Line and show how access to the West Coast Main line will be maintained at all times.

(3) The authorised development is to be carried out in accordance with the details approved [<sup>F12</sup>under sub-paragraph (2)] to the satisfaction of the local planning authority in consultation with Network Rail.

### Textual Amendments

**F12** Words in Sch. 2 para. 6(3) inserted (21.10.2020) by The West Midlands Rail Freight Interchange (Correction) Order 2020 (S.I. 2020/1163), arts. 1, 2(10)(b)

## Construction hours

7.—(1) Subject to sub-paragraphs (2) and (3), construction and demolition works (which for the purposes of this requirement excludes archaeological investigations and any non-intrusive internal fit-out works but must include start up and shut down and deliveries) must not take place other than between 07:00 and 18:30 hours on weekdays and 08:00 and 13:00 hours on Saturdays, and not at all on Sunday nor on bank holidays in England and Wales (under section 1 of the Banking and Financial Dealings Act 1971 <sup>M67</sup>), unless otherwise agreed in writing by the local planning authority.

(2) Subject to sub-paragraph [<sup>F13</sup>(3)], the following working is permitted outside the construction and demolition works' hours specified in sub-paragraph (1)—

- (a) pre-planned construction works to highway or rail infrastructure requiring possessions where first notified to the local planning authority and local residents;
- (b) emergency works; and
- (c) works which do not cause noise that is audible at the boundary of the Order limits.

(3) Regardless of sub-paragraphs (1) and (2) no piling operations are to take place after 18:00 hours unless otherwise agreed in writing by the local planning authority.

(4) Any emergency works carried out under sub-paragraph (2)(b) must be notified to the local planning authority within 72 hours of their commencement.



#### **Textual Amendments**

**F13** Word in Sch. 2 para. 7(2) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, **2(10)(c)**

#### **Marginal Citations**

**M67** 1971 c. 80.

### **Air quality – operational emissions**

**8.—**(1) No warehouse or rail terminal may be brought into use until details of any combustion plant, where the single or combined NO<sub>x</sub> emission rate is greater than 5mg/second, have been submitted to and approved in writing by the local planning authority. Where applicable, considering IAQM guidance (Guidance from Environmental Protection UK and the Institute of Air Quality Management for the consideration of air quality within the land-use planning and development control processes – January 2017), the details will be supported by an air quality assessment, which must outline mitigation measures if necessary.

(2) Any combustion plant must be installed and operated in accordance with manufacturers' instructions at all times.

### **Archaeology**

**9.—**(1) No phase of the authorised development (with the exception of the highway works to the existing highways (the A5, the A449, Vicarage Road, Station Road and Station Drive) which are governed by Parts 2 and 3 of Schedule 13 (protective provisions)) is to commence until a written scheme of investigation for that phase has been submitted to and approved in writing by the local planning authority. The written scheme of investigation must be in accordance with the principles set out in the outline written scheme of investigation contained in technical appendix 8.5 of the environmental statement.

(2) The written scheme of investigation must provide for the investigation of areas of archaeological interest identified by the evaluation surveys which established the base line conditions in the environmental statement and include the following components, completion of each of which will trigger the phased discharging of the requirement—

- (a) approval of a written scheme of investigation;
- (b) where identified to be necessary, fieldwork in accordance with the agreed written scheme of investigation;
- (c) completion of a post-fieldwork assessment report; to be submitted within 6 months of the completion of fieldwork, unless otherwise agreed in advance in writing by the local planning authority; and
- (d) completion of analysis, preparation of site archive ready for deposition at a store approved by the local planning authority, production of an archive report, and submission of a publication report; to be completed within 2 years of the completion of fieldwork, unless otherwise agreed in advance in writing by the local planning authority.

(3) Any actions required by the written scheme of investigation must be carried out by a suitably qualified archaeologist in accordance with that approved scheme.

(4) The programme of archaeological work may be subject to alteration by approval in writing by the local planning authority.

*Status: Point in time view as at 21/10/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)*

### **Cultural heritage – demolition of heritage assets**

10.—(1) The undertaker must not demolish the Woodside Farm House and associated structures (as identified on the map of heritage receptors) before the commencement of development at Development Zones A6, A5b or A7c as shown on development zone parameter plan.

(2) The Woodside Farm House and associated structures must not be demolished until they have been subject to a scheme of historic building recording by suitably qualified professionals and written confirmation obtained from the local planning authority that the works required under sub-paragraph (4)(a) to (c) have been completed and have been submitted to the local planning authority.

(3) The scheme of historic building recording must be undertaken in accordance with a written scheme of investigation which will be submitted to and approved in writing by the local planning authority before the recording begins. The written scheme of investigation must set out the level of recording required in accordance with the ‘Understanding Historic Buildings: A Guide to Good Recording Practice’ guidance prepared by Historic England (May 2016, or latest edition at the time the written scheme of investigation is prepared).

(4) The written scheme of investigation must include the following components—

- (a) the identification, description and methodology for the level of recording necessary for the Woodside Farm House and associated structures as per the Historic England guidance referred to in sub-paragraph (3);
- (b) research on the heritage asset necessary to understand their historical and architectural interest which is proportionate to the level of recording identified;
- (c) an on-site survey of the Woodside Farm House and associated structures in accordance with paragraph (a) and to include photography; and
- (d) completed research and analysis for presentation in an illustrated historic building recording report to be submitted within 12 weeks of recording work on site. The report will be suitable for deposition at an archival store as directed and approved by the local planning authority.

(5) The archive referred to in sub-paragraph (4)(d) should be collated, ordered and indexed in accordance with the requirements of the Management of Research Projects in the Historic Environment (MoRPHE) (Historic England, 2015).

### **Cultural heritage – demolition of canal crossings**

11. Demolition of the canal crossings (as identified on the development zone parameter plan) must be completed within 5 years of the commencement of the authorised development.

### **Ecological mitigation and management plan**

12.—(1) No phase of the authorised development which incorporates ecological mitigation or management is to commence until a written ecological mitigation and management plan for that phase has been submitted to and approved in writing by the local planning authority. The ecological mitigation and management plan must be in accordance with the principles set out in the framework ecological mitigation and management plan. The ecological mitigation and management plan may be subject to alteration by agreement in writing by the local planning authority.

(2) Any ecological mitigation and management plan approved under sub-paragraph (1) must include an implementation timetable and must be carried out as approved in writing by the local planning authority.

(3) If a phase does not include ecological mitigation or management then a statement from the undertaker must be provided to the local planning authority prior to the relevant phase being commenced, confirming that the phase includes no ecological mitigation or management and

therefore no ecological mitigation and management plan is required for that phase pursuant to sub-paragraph (1).

(4) Where specified as required in the framework ecological mitigation and management plan, works must be supervised by a suitably qualified person or body.

#### **Ground conditions – contamination risk**

**13.**—(1) No phase of the authorised development (with the exception of the highway works to the existing highways (the A5, the A449, Vicarage Road, Station Road and Station Drive) which are governed by Parts 2 and 3 of Schedule 13 (protective provisions)) is to commence until a contamination report for that phase has been submitted to and approved in writing by the local planning authority.

(2) The contamination report will either—

(a) confirm that no further investigation is necessary for that phase of authorised development and, where applicable, what remedial measures are proposed (and detail how the remedial measures will be verified (a “verification plan”)) or confirm that no remedial measures are required for the particular phase of development; or

(b) include a written scheme of any further investigation considered necessary for that phase of the authorised development.

(3) Where further investigation is considered necessary under sub-paragraph (2)(b), the findings will be outlined in an assessment report to identify the extent of any contamination and, where applicable, any remedial measures to be taken to render the land fit for its intended purpose (and include details of a verification plan). The assessment report for that phase of the authorised development will be submitted to and approved in writing by the local planning authority.

(4) If, during the course of construction, previously unidentified contamination is discovered which potentially poses a significant risk to site occupants, controlled waters or ecological receptors, construction must cease on that localised area and the contamination must be reported in writing to the local planning authority within 10 working days. Prior to the recommencement of construction on that localised area, suitable investigation for the discovered contamination (to include any required amendments to the remedial measures) must be submitted to and approved in writing by the local planning authority. The authorised development must then be implemented in accordance with the details submitted to the local planning authority, unless otherwise agreed in writing by the local planning authority.

(5) Any contamination report, assessment report and any suitable investigation for discovered contamination referred to in this requirement related to the authorised development at Development Zones A1, B and/or C as shown on development zone parameter plan must be in accordance with the principles set out in the remediation safeguarding report.

**14.**—(1) No part of the authorised development (with the exception of the highway works to the existing highways (the A5, the A449, Vicarage Road, Station Road and Station Drive) which are governed by Parts 2 and 3 of Schedule 13 (protective provisions)) may be brought into use until either—

(a) if no remediation measures or verification plan was required under requirement 13 (ground conditions – contamination risk) a statement from the undertaker, or their approved agent, must be provided to the local planning authority, stating that no previously unidentified contamination was discovered during the course of development; or

(b) if remediation measures and verification plan were agreed under sub-paragraphs (2)(a) or (3) of [F14 requirement 13 (ground conditions – contaminated risk)], verification measures must be undertaken in line with the agreed verification plan for any works outlined in the

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

remedial measures and a report showing the findings of the verification (a “verification report”) must be submitted to and approved in writing by the local planning authority.

- (2) The verification report must—
- (a) contain a full description of the works undertaken in accordance with the agreed remedial measures and verification plan; and
  - (b) demonstrate the effectiveness of the approved remedial measures.

#### Textual Amendments

**F14** Words in Sch. 2 para. 14(1)(b) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, **2(10)(d)**

#### Earthworks

**15.** No phase of the authorised development (with the exception of the highway works to the existing highways (the A5, the A449, Vicarage Road, Station Road and Station Drive) which are governed by Parts 2 and 3 of Schedule 13 (protective provisions) and excluding archaeological investigation, geotechnical or ground contamination investigation and ecological mitigation works) is to commence until details of—

- (a) the earthworks strategy relating to that phase of authorised development including the management and protection of soils;
- (b) an earthworks specification for each phase of the authorised development;
- (c) cutting slopes and embankment design that would accord with the approved earthworks specification;
- (d) the extent of any material to be temporarily stored within the site;
- (e) the use of the sand and gravel disturbed during the construction of the phase in connection with the authorised development; and
- (f) any surplus material to be removed from the site for disposal or material to be imported to the site,

have been submitted to and approved in writing by the local planning authority. All earthworks must be carried out in accordance with the details as approved.

#### Landscape – written landscaping scheme

**16.—(1)** No phase of the authorised development containing landscaping mitigation is to commence until a written landscaping scheme for that phase (including the strategic landscaping included within that phase) has been submitted to and approved in writing by the local planning authority.

(2) The landscaping scheme must be in accordance with the green infrastructure parameters plan and must include details of all proposed soft landscaping works, including—

- (a) location, number, species, size, layout, method of trees support, plant protection measures and planting density of any proposed planting;
- (b) cultivation, importation of materials and other operations to ensure plant establishment;
- (c) details of existing trees to be retained, with measures for their protection during the construction period in accordance with British Standard 5837:2012 “Trees in relation to Design, Demolition and Construction Recommendations”, and to include a schedule of

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

remedial tree works to be carried out in accordance with British Standard 3998:2010 “Tree Works Recommendations” prior to construction commencing;

- (d) a method statement and plan for the propagation, planting, establishment and maintenance of propagated Black Poplar specimens;
- (e) the hedgerows which are to be retained;
- (f) a canal enhancement scheme (for the relevant phase);
- (g) a programme for the implementation of the works; and
- (h) a landscape management plan setting out for a period of 20 years the arrangements for future maintenance including methods of funding and future monitoring, review and the maintenance of new trees, shrubs, hedgerows, woodlands and grassed areas and retained trees, shrubs, hedgerows, woodlands and grassed areas.

(3) Any written landscaping scheme approved under sub-paragraph (2) must include an implementation timetable and must be carried out as approved in writing by the local planning authority.

(4) If a phase does not include landscaping mitigation then a statement from the undertaker must be provided to the local planning authority prior to the relevant phase being commenced, confirming that the phase includes no landscaping mitigation and therefore no written landscaping scheme is required for that phase pursuant to sub-paragraph (1).

(5) The soft landscaping works in the vicinity of the “bat hop-overs” as identified on Figure A1.1 of the framework ecological mitigation and management plan must be in general accordance with the principles set out in the framework ecological mitigation and management plan and the bat hop-over structures must be erected prior to any new road to which they relate being brought into use.

### **Landscape – implementation and maintenance of landscaping works**

17.—(1) All landscaping works (with the exception of the highway works which are governed by Parts 2 and 3 of Schedule 13 (protective provisions)) must be carried out and maintained in accordance with the written landscaping scheme approved under requirement 16 (landscape – written landscaping scheme).

(2) Any tree or shrub planted as part of an approved landscape scheme that, within a period of 10 years after planting is removed, dies or becomes, in the opinion of the local planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the local planning authority gives consent to any variation.

### **Landscape – phasing of landscaping and ecology works**

18. The undertaker must complete the landscaping works identified in column (2) of the following table by no later than the stage of the authorised development set out in column (3) of that table or such alternative later triggers as are agreed by the local planning authority.

<i>(1) Item as identified on the green infrastructure parameters plan</i>	<i>(2) Description</i>	<i>(3) Stage of Authorised Development</i>
(i)	Croft Lane Community Park	To be completed within 5 years of the commencement of the authorised development.

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

(ii)	The ecological corridor linking Calf Heath Wood and Calf Heath Reservoir	To be completed within 5 years of the commencement of the authorised development, or prior to commencement of development at Development Zones A4a or A4b as shown on the green infrastructure parameters plan, whichever is sooner.
(iii)	The southern section of Calf Heath Community Park	To be completed prior to the commencement of development at Development Zones A4b as shown on the green infrastructure parameters plan.

### Height of containers

19. The height of any stack of containers within the Order limits must not exceed 12 metres.

### Lighting details

20.—(1) No phase of the authorised development which incorporates artificial lighting is to commence until a lighting scheme with details of the proposed permanent external lighting in that phase has been submitted to and approved in writing by the local planning authority. The lighting scheme must accord with the principles established in the lighting strategy and lighting impact assessment but notwithstanding the content of the lighting strategy must have regard to the location and height of lighting columns in the vicinity of landscape bunds and screening. The lighting scheme must also accord with the ecological principles established in framework ecological management and mitigation plan.

(2) The approved lighting scheme must be implemented and maintained during operation of the authorised development and no external lighting other than that approved under this requirement may be installed.

(3) The highways lighting in the vicinity of the “bat hop-overs” as identified on Figure A1.1 of the framework ecological mitigation and management plan must be in accordance with the principles set out in the framework ecological management and mitigation plan.

(4) The details submitted under this requirement must include details of any lighting on any gantry cranes included in the phase concerned.

### Noise – construction stage

21.—(1) For normal daytime construction and demolition works carried out on weekdays between 07:00 and 18:30 hours, the construction and demolition noise level measured at a noise sensitive receptor must not exceed Leq, 11 hour 65 dB(A) and on Saturdays between 08:00 and 13:00 hours, the noise level measured at a noise sensitive receptor must not exceed Leq, 5 hour 65 dB(A) wherever practicable. Where this is not practicable, prior approval from the local authority must be sought, with full justification given for the deviation.

(2) Subject to health and safety requirements, broadband reversing alarms must be employed on mobile plant.

(3) In the event that complaints for noise nuisance are received by the local planning authority in respect of construction noise and the local planning authority considers those complaints justified, the undertaker must unless otherwise agreed by the local planning authority, at its own expense, employ a consultant approved by the local planning authority to carry out an assessment of noise from the development relating to noise from construction of the site. The assessment will be carried out to an appropriate methodology agreed in writing by the local planning authority and the results of the assessment will be submitted to the local planning authority within 28 days of the assessment. If it is found that the effect of noise from the authorised development is greater than was anticipated (as set out in paragraphs 13A.67 to 13A.82 of the addendum to Chapter 13 of the

environmental statement), recommendations for appropriate remedial measures must be made and those recommendations, where reasonable, implemented in accordance with a programme agreed between the local planning authority and the undertaker.

### **Noise – operational stage**

**22.**—(1) Prior to the occupation of any warehouse unit, details of all mechanical and ventilation plant must be submitted to and approved in writing by the local planning authority. Any fixed plant or ventilation equipment must be installed and operated in accordance with manufacturers' instructions at all times and the overall rating levels from all mechanical and ventilation plant should not exceed the limits set out in Table 13A.20 of the addendum to Chapter 13 of the environmental statement.

(2) The external walls of all warehouses must provide a minimum sound reduction of 39dB Rw and all warehouse roofs must provide a minimum sound reduction of 28dB Rw.

(3) Subject to health and safety requirements, broadband reversing alarms must be employed on site-based mobile plant and vehicles.

(4) In the event that complaints for noise nuisance are received by the local planning authority in respect of operational noise and the local planning authority considers those complaints justified, the undertaker must unless otherwise agreed by the local planning authority, at its own expense, employ a consultant approved by the local planning authority to carry out an assessment of noise from the development relating to noise from operation of the site. The assessment will be carried out to an appropriate methodology agreed in writing by the local planning authority and the results of the assessment will be submitted to the local planning authority within 28 days of the assessment. If it is found that the effect of noise from the authorised development is greater than was anticipated (as set out in paragraphs 13A.83 to 13A.133 of the addendum to Chapter 13 of the environmental statement), recommendations for appropriate remedial measures must be made and those recommendations, where reasonable, implemented in accordance with a programme agreed between the local planning authority and the undertaker.

### **Permissive paths**

**23.**—(1) No phase of the authorised development containing permissive paths is to commence until a scheme for the provision of the permissive paths in that phase has been submitted to and approved in writing by the local planning authority.

(2) The schemes referred to in sub-paragraph (1) must—

- (a) set out the specification of the relevant permissive paths and timing of their provision;
- (b) confirm the arrangements for ongoing maintenance of the relevant permissive paths;
- (c) ensure public access to the relevant permissive paths at all time save for emergency closures and any closures required to maintain their permissive status; and
- (d) make provision for the alteration to, or replacement of, the relevant permissive paths subject to the provision of suitable alternative arrangement.

(3) The approved permissive paths schemes must be implemented and maintained during operation of the authorised development.

### **Transport – demolition and construction**

**24.**—(1) The construction and demolition works must be carried out in accordance with the demolition and construction traffic management plan. The demolition and construction traffic management plan may be subject to alteration by agreement in writing by the local highway authority.

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

(2) No phase of the authorised development is to commence until a scheme for the provision, maintenance and subsequent removal of temporary signage for construction traffic in respect of that phase has been submitted to and approved by the local planning authority. The undertaker must provide, maintain and remove the temporary signage in accordance with the approved scheme.

### Transport – phasing of highway works

**25.**—(1) The undertaker must complete the highway works identified in columns (1) and (2) of the following table by no later than the stage of the authorised development set out in column (3) of that table or such alternative later triggers as are agreed by the relevant body or bodies identified in column (4) of that table.

<i>(1) Item as identified on the highway general arrangement key plan / highways masterplan</i>	<i>(2) Description</i>	<i>(3) Stage of Authorised Development</i>	<i>(4) Relevant Body</i>
(i)	A5 Roundabout, including Avenue Cottages junction	Access works to Cottages To be completed prior to the occupation of first warehouse of less than 47,000 square metres (gross internal area) of warehouse floorspace accessed from the Vicarage Road Access Roundabout (item (iii)).	Highways England / Staffordshire County Council
(ii)	A5 – A449 link road	To be completed prior to occupation of more than 140,000 square metres (gross internal area) of warehouse floorspace served via the A5 and 47,000 square metres (gross internal area) of warehouse floorspace served via the Vicarage Road Access Roundabout (item (iii)) or within five years of the occupation of more than 47,000 square metres (gross internal area) of warehouse floorspace, whichever is sooner.	Highways England / Staffordshire County Council
(iii)	Vicarage Road Access Roundabout	To be completed prior to the occupation of any warehouse floorspace to accessed from the Vicarage Road Access Roundabout.	Staffordshire County Council
(iv)	Right turn ban and associated works at A449 / Station Drive junction	Not to be in force until such time as the A449 Roundabout (item (iv)) has been completed.	Highways England



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| (v)    | Crateford Lane closed to westbound traffic   | To be completed prior to occupation of more than 140,000 square metres (gross internal area) of warehouse floorspace or within five years of the occupation of more than 47,000 square metres (gross internal area) of warehouse floorspace, whichever is sooner. | Staffordshire County Council |
| (vi)   | Improved footway links along the A5 between Gailey Roundabout and the A5 Access Roundabout                       | To be completed within 6 months of opening the A5 Access Roundabout.  | Highways England             |
| (vii)  | Upgraded footway / cycleway on the A449 between Station Drive and Gailey Roundabout                              | To be completed within 6 months of opening the A449 Access Roundabout.  | Highways England             |
| (viii) | Provide HGV turning area on Station Drive to the west of the rail bridge   | To be completed within 6 months of completing the Vicarage Road Access.   | Staffordshire County Council |
| (ix)   | Provide relocated A449 laybys to include closure of existing gaps in A449 Central Reservation and field accesses | To be completed prior to commencement of construction of A5 Access Roundabout.  | Highways England             |
| (x)    | Improved visibility splay at Vicarage Road / Straight Mile Priority Junction                                     | To be completed prior to opening of Vicarage Road Roundabout.   | Staffordshire County Council |
| (xi)   | Provide footway and crossing improvements at Straight Mile / Kings Road / Woodlands Lane                         | To be completed prior to opening of network of permissive paths / community parks.  | Staffordshire County Council |
| (xii)  | Provide pedestrian crossing facilities at Straight Mile  | To be completed prior to opening of network of permissive paths / community parks.  | Staffordshire County Council |
| (xiii) | Provide new Cycleway on Vicarage Road  | To be completed within 6 months of completing the Vicarage Road Access Roundabout.  | Staffordshire County Council |
| (xiv)  | A449 Roundabout  | To be completed prior to occupation of more than 140,000  | Highways England             |

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**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

square metres (gross internal area) of warehouse floorspace or within five years of the occupation of more than 47,000 square metres (gross internal area) of warehouse floorspace, whichever is sooner.

(2) At least two weeks prior to the anticipated date of each event/trigger specified in column (3) of the table in sub-paragraph (1) the undertaker must notify the relevant body identified in column (4) of that table of that anticipated date.

#### **Water and flood risk – flood risk assessment**

**26.** The authorised development must be carried out in accordance with the mitigation measures detailed within section 5.3 of the flood risk assessment or be carried out in accordance with any variation to these measures agreed in writing with the Environment Agency, the relevant local flood authority or the approving body under Schedule 3 (sustainable drainage) to the Flood and Water Management Act 2010<sup>M68</sup>, whichever of these is the body having jurisdiction over the watercourse in question.

#### **Marginal Citations**

**M68** 2010 c. 29.

#### **Water and flood risk – surface water drainage scheme**

**27.—(1)** No phase of the authorised development (excluding archaeology works) is to commence until a surface water drainage scheme for that phase has been submitted to and approved in writing by the local planning authority or such other approval process that is put in place under the Flood and Water Management Act 2010. The surface water drainage scheme must be generally in accordance with the flood risk assessment and site-wide surface water drainage strategy and section 3.4 of the water framework directive assessment and must include a schedule of required maintenance activities (including frequency), and details of who is to be responsible for such maintenance, to ensure the continued performance of the system for the lifetime of the authorised development.

(2) Any surface water drainage scheme approved under sub-paragraph (1) (including, for the avoidance of doubt, the sustainable urban drainage component (SUDS)) must be implemented and maintained in accordance with the details approved by the local planning authority or in accordance with any variations to the details agreed in writing by the local planning authority prior to the completion of the relevant phase of the authorised development.

#### **Water and flood risk – foul water drainage**

**28.—(1)** Prior to the commencement of the development of any warehouse or the rail terminal, a foul water drainage scheme must be submitted to and approved in writing by the local planning authority.

(2) Any foul water drainage scheme approved under sub-paragraph (1) must be implemented in accordance with the details approved by the local planning authority or in accordance with any variations to the details agreed in writing by the local planning authority prior to the occupation of any warehouse unit or the rail terminal.

### **Building sustainability**

**29.**—(1) No construction of a warehouse is to commence until a BREEAM pre-assessment report based upon the BREEAM 2011 method (or equivalent) has been submitted to and approved in writing by the local planning authority demonstrating that the warehouse is expected to achieve at least a BREEAM 2011 “Very Good” rating (BREEAM Industrial 2008 “Excellent”).

(2) The construction of each of the warehouses must be carried out in accordance with the details in the BREEAM pre-assessment report (or equivalent) for that warehouse and a certificate must be provided within three months of completion or occupation (whichever is the sooner) of each warehouse confirming that the measures in respect of that warehouse committed to within the pre-assessment report have been implemented.

### **Waste management during the operational phase**

**30.** No warehouse, rail terminal or community park may be brought into use until a waste management scheme for that part of the authorised development during the operational phase has been submitted to and approved in writing by the local planning authority. Thereafter the approved scheme must be implemented and maintained for the duration of the operation of that part of the authorised development.

## **PART 2**

### **RAIL REQUIREMENTS**

#### **Interpretation**

**31.** In this Part of this Schedule—

“rail terminal works” means the works required to construct and provide a rail terminal capable of handling at least four trains a day;

“rail terminal” means the rail terminal constructed as a result of and upon completion of the rail terminal works;

“rail provision milestones” means the actions, and the timing related thereto, set out in requirements 40 and 41 (rail provision milestones);

“undertaker” has the same meaning as sub-paragraph (a) of the definition of “undertaker” in article 2 (interpretation); and

“GRIP 3”, “GRIP 4” and “GRIP 5” relate to Network Rail’s Governance for Rail Investment Projects current at the date of this order.

#### **Rail Provision**

**32.** The undertaker must comply with all the rail provision milestones unless otherwise agreed with the local planning authority.

**33.** The undertaker must keep the local planning authority advised of progress in respect of all the rail provision milestones on a quarterly basis including providing copies to the local planning authority of any material formally submitted to all bodies in pursuance of compliance with the rail provision milestones, if requested.

**34.** The undertaker must notify the local planning authority of the date of the first occupation of more than 47,000 square metres of warehousing and 186,000 square metres of warehousing within 28 days of such occupations occurring.

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

### **Rail Infrastructure**

**35.** The undertaker must complete the rail terminal works prior to the earliest of—

- (a) the occupation of more than 186,000 square metres of warehousing; or
- (b) the sixth anniversary of the first occupation of more than 47,000 square metres of warehousing.

**36.** The undertaker must pursue the completion of the rail terminal works as expeditiously as possible following the commencement of their construction.

**37.** Following completion of the rail terminal works the undertaker must retain, manage and keep the rail terminal works available for use.

### **Rail Support**

**38.** The undertaker must appoint a rail freight co-ordinator at least 3 months prior to the submission of the application for approval of GRIP 3 referred to in paragraph (1) of requirement 40 (rail provision milestones) who must report to the local planning authority no less than once a quarter on—

- (a) the progress towards meeting the rail provision milestones;
- (b) the progress of the rail terminal works; and
- (c) the operation of the rail terminal when open including—
  - (i) the appointment of a rail operator to operate the rail terminal;
  - (ii) the amount of rail freight usage of the rail terminal;
  - (iii) the number of trains using the rail terminal;
  - (iv) the warehousing receiving or sending goods through the rail terminal; and
  - (v) the amount of goods being received or sent through the rail terminal by freight handlers not occupying the warehousing.

**39.** The undertaker must maintain a person in the position of rail freight co-ordinator throughout the life of the authorised development unless otherwise agreed with the local planning authority.

### **Rail Provision Milestones**

**40.**—(1) The undertaker must submit an application to Network Rail for approval of the matters required to be considered as part of GRIP 3 by Network Rail prior to commencement of the authorised development and thereafter pursue such application expeditiously.

(2) The undertaker must submit an application to Network Rail for approval of the matters required to be considered as part of GRIP 4 by Network Rail within 3 months of the approval of the matters approved under sub-paragraph (1) and thereafter pursue such application expeditiously.

(3) The undertaker must identify and apply to Network Rail for the necessary track possessions required to enable the carrying out of the rail terminal works by no later than 14 days from approval of the matters approved under sub-paragraph (2) and thereafter pursue such application expeditiously.

(4) The undertaker must submit an application to Network Rail for approval of the matters required to be considered as part of GRIP 5 by Network Rail within 12 months of approval of the matters approved under sub-paragraph (2) and thereafter pursue such application expeditiously.

**41.** The undertaker must progress the approvals referred to in paragraphs (a) to (d) as expeditiously as possible following the commencement of the authorised development—

- (a) the approval of all of the detailed design information (as defined in paragraph 2 of Part 3 of Schedule 13 (protective provisions) for Works No. 4 (A5/A449 link road) pursuant to paragraph 3 of Part 3 of Schedule 13;
- (b) the obtaining of a variation to the existing environmental permit issued under the Environmental Permitting (England & Wales) Regulations 2016 relating to the remediation of the SI land;
- (c) the obtaining of any approvals required from Network Rail in connection with the construction of the rail terminal works pursuant to the provisions of Part 1 of Schedule 13; and
- (d) the obtaining of all other consents required to lawfully construct the rail terminal works.

## PART 3

### PROCEDURE FOR APPROVALS ETC. UNDER REQUIREMENTS

#### Interpretation

**42.** In this Part of this Schedule—

“appeal documentation” means the application submitted to the discharging authority, any further information submitted under paragraph 44 and any notice of a decision to refuse;

“the appeal parties” means the discharging authority, the undertaker and any requirement consultee(s);

“discharging authority” means the authority from whom a consent, approval or agreement is required or requested by the undertaker under the requirement concerned;

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the discharging authority in discharging that requirement; and

“working day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holiday) of the Banking and Financial Dealings Act 1971 <sup>M69</sup>.

#### Marginal Citations

**M69** 1971 c. 80.

#### Applications made for certain approvals

**43.—**(1) Where an application has been made to a discharging authority for any consent, agreement or approval required or contemplated under the requirements in <sup>F15</sup>... this Schedule the discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

- (a) where no further information is requested under paragraph 44, 42 days from the day immediately following that on which the application is received by the discharging authority;

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

- (b) where further information is requested under paragraph 44, 42 days from the day immediately following that on which the further information has been supplied by the undertaker under paragraph 44; or
- (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in paragraph (a) or (b).

### Textual Amendments

**F15** Words in [Sch. 2 para. 43](#) omitted (21.10.2020) by virtue of [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, **2(11)**

### Further information

**44.**—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary it must, within 10 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the discharging authority does not give such notification as specified in sub-paragraph (2) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

### Appeals

**45.**—(1) The undertaker may appeal in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required or contemplated under the requirements or grants it subject to conditions;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 43;
- (c) on receipt of a request for further information under paragraph 44 the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the decision period as determined under paragraph 43;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must within 7 working days provide copies of the appeal documentation to the discharging authority and the requirement consultees;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”)<sup>M70</sup> and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person's attention should be sent;

- (d) the discharging authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal within 20 working days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
  - (e) the appeal parties must make any counter-submissions to the appointed person within 20 working days of receipt of written representations under paragraph (d).
- (3) The appointed person must make a decision and notify it to the appeal parties, with reasons, within 20 working days of expiry of the 20-working day period referred to in sub-paragraph (2)(e) or, if applicable, within 20 working days of the expiry of the 10-working day period referred to in sub-paragraph (6).
- (4) The appointment of the person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.
- (5) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.
- (6) Any further information required under sub-paragraph (5) is to be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 working days of that date.
- (7) On an appeal under this paragraph, the appointed person must—
- (a) allow or dismiss the appeal; or
  - (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),
- and may deal with the application as if it had been made to the appointed person in the first instance.
- (8) The appointed person must proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or other time limits set by the appointed person under this sub-paragraph.
- (9) The appointed person must proceed to a decision even though no written representations have been made within the prescribed time limits, or any other time limit set in accordance with sub-paragraph (9).
- (10) The decision of the appointed person on an appeal is to be final and binding on the appeal parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.
- (11) If an approval is given by the appointed person under this Part of this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the requirement as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.
- (12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the undertaker<sup>M71</sup>.
- (13) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it

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is to be made, the appointed person must have regard to the Planning Practice Guidance published by the Department for Communities and Local Government on 6th March 2014 or any circular or guidance which may from time to time replace it.

**Marginal Citations**

- M70** The appointment is made at the discretion of the Secretary of State, and such appointment may be made by the Planning Inspectorate on behalf of the Secretary of State.
- M71** The costs of the appointed person are calculated based on the applicable day rate for a Single Inspector as if he or she were appointed under s78/ s79 of the PA2008. See the National Infrastructure Planning website for more information: <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

**Fees**

**46.—(1)** Where an application is made to the discharging authority for consent, agreement or approval in respect of a requirement, other than where the parties have agreed otherwise, the fee that would have been payable had the fee been determined under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 <sup>M72</sup>, is to be paid to that authority.

(2) Any fee paid under this Part of this Schedule must be refunded to the undertaker within 42 days of—

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within the decision period as determined under paragraph (1),

unless within that period the undertaker agrees, in writing, that the fee is to be returned by the discharging authority and credited in respect of a future application.

**Marginal Citations**

- M72** [S.I. 2012/2920](#), amended by [S.I. 2013/2153](#), [S.I. 2014/357](#), [S.I. 2014/2026](#), [S.I. 2015/643](#), [S.I. 2017/1314](#) and [S.I. 2019/1154](#).

SCHEDULE 3

Article 8

STREETS SUBJECT TO STREET WORKS

<i>(1) Area</i>	<i>(2) Street within the Order limits subject to street works</i>
District of South Staffordshire and Parishes of Penkridge, Hatherton and Brewood and Coven	A5 A449 Vicarage Road Straight Mile Station Drive Station Road



**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

Harrisons Lane  
 Crateford Lane  
 Gravelly Way  
 Four Ashes Road  
 Kings Road  
 Woodlands Lane  
 Access to Avenue Cottages  
 Access to the Poplars

SCHEDULE 4

Article 10

STREETS TO BE STOPPED UP

**PART 1**

STREETS TO BE PERMANENTLY STOPPED UP  
 FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1) Area</i>	<i>(2) Street to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New street to be substituted</i>
District of Staffordshire Parish of Penkridge	South Gravelly and Way	The existing highway along the length shown hatched red between points (i) and (ii) on the access and rights of way plans (Document 2.3A).	New highway along the length tinted grey between points A and B on the access and rights of way plans (Document 2.3A).

**PART 2**

STREETS TO BE PERMANENTLY STOPPED UP AND BECOME PRIVATE STREETS

<i>(1) Area</i>	<i>(2) Street to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) Replacement private street</i>
District of Staffordshire Parish of Penkridge	South Gravelly and Way	The existing highway along the length shown cross hatched green on the access and rights of way plans (Document 2.3C).	The new private road along the length shown cross hatched green on the access and rights of way plans (Document 2.3C).

**Status:** Point in time view as at 21/10/2020.  
**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

## SCHEDULE 5

Article 12

## PUBLIC RIGHTS OF WAY

**PART 1**PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED  
UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1) Area</i>	<i>(2) Public right of way to be stopped up</i>	<i>(3) Extent of stopping up</i>
District of South Staffordshire and Parish of Penkridge	Public footpath and Penkridge 29	The length of existing footpath shown with a dashed red line between the points (iii) and (iv) on the access and rights of way plans (Document 2.3A).

**PART 2**

## NEW PUBLIC RIGHT OF WAY TO BE CREATED

<i>(1) Area</i>	<i>(2) Public right of way to be created</i>	<i>(3) Extent of new public right of way</i>	<i>(4) Stage of the authorised development</i>
District of South Staffordshire and Parish of Penkridge	Footpath and cycle track	The length of footpath and cycle track shown coloured blue between points LL and AA on the access and rights of way plans (Document 2.3C).	No later than six months from the opening to public traffic of the A5/A449 link road.

## SCHEDULE 6

Article 13

## PRIVATE MEANS OF ACCESS

**PART 1**PRIVATE MEANS OF ACCESS TO BE CLOSED FOR  
WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1) Area</i>	<i>(2) Private Means of Access</i>	<i>(3) Stage of the Authorised Development</i>
District of South Staffordshire	Field access to the west of the A449 shown with a green dot at point 1 on the access and rights of way plans (Document 2.3A and 2.3F).	Upon the opening to public traffic of the layby on the western side of the A449.

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

District of South Staffordshire	of Field access to the east of the A449 shown with a green dot at point 2 on the access and rights of way plans (Document 2.3A and 2.3F).	Upon the opening to public traffic of the layby on the eastern side of the A449.
District of South Staffordshire	of Field access to the south of the A5 shown with a green dot at point 3 on the access and rights of way plans (Document 2.3A and 2.3B).	Upon the commencement of construction of the roundabout at the junction of the A5 with the A5/A449 link road.
District of South Staffordshire	of Access to Clovelly south of the A5 shown with a green dot at point 4 on the access and rights of way plans (Document 2.3A and 2.3B).	Upon the commencement of construction of the roundabout at the junction of the A5 with the A5/A449 link road.
District of South Staffordshire	of Access to Fir Tree Cottage to the east of the A449 shown with a green dot at point 5 on the access and rights of way plans (Document 2.3E).	Upon the commencement of that part of the authorised development known as Zone A1 as shown on the parameters plans.
District of South Staffordshire	of Field access to the east of the A449 shown with a green dot at point 6 on the access and rights of way plans (Document 2.3E).	Upon the commencement of that part of the authorised development known as Zone A1 as shown on the parameters plans.
District of South Staffordshire	of Access to Croft Farm shown coloured purple between points FF and GG on the access and rights of way plans (Document 2.3A).	Upon the commencement of that part of the authorised development known as Zone A3 as shown in the parameters plans.
District of South Staffordshire	of Access to Calf Heath Quarry shown coloured purple between points HH and II on the access and rights of way plans (Document 2.3B).	Upon the commencement of that part of the authorised development known as Zone A4a as shown on the parameters plans.

## PART 2

### PRIVATE MEANS OF ACCESS TO BE CLOSED AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1) Area</i>	<i>(2) Extent</i>	<i>(3) Replacement</i>	<i>(4) Stage of the authorised development</i>
District of South Staffordshire	of Existing Gravelly Way between points KK and EEE shown purple on the access and rights of way plans (Document 2.3C).	(i) The private means of access shown hatched blue between points FFF and GGG and MM, FFF and GGG and NN, and FFF and GGG and HHH on the access and rights of way plans (Document 2.3C); and	No later than the opening to public traffic of the A5/A449 link road.

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

		(ii) The private means of access shown hatched blue between points CCC and BBB and DDD and PP on the access and rights of way plans (Document 2.3C).	
District of South Staffordshire	Existing Gravelly Way between points EEE and JJ shown cross hatched purple on the access and rights of way plans (Document 2.3C).	(i) The private means of access shown hatched blue between points CCC and BBB on the access and rights of way plans (Document 2.3C); and (ii) The private means of access shown hatched blue between points DDD and PP on the access and rights of way plans (Document 2.3C).	No later than the opening to public traffic of the A5/A449 link road.
District of South Staffordshire	Existing Gravelly Way at point QQ shown purple on the access and rights of way plans (Document 2.3C).	(i) The private means of access shown hatched blue between points CCC and BBB on the access and rights of way plans (Document 2.3C); and (ii) The private means of access shown hatched blue between points DDD and PP on the access and rights of way plans (Document 2.3C).	No later than the opening to public traffic of the A5/A449 link road.

### PART 3

#### NEW PRIVATE MEANS OF ACCESS CREATED

<i>(1) Area</i>	<i>(2) Private Means of Access</i>	<i>(3) Stage of the authorised development</i>
District of South Staffordshire	The private footpath shown with a dashed orange line between points J and AAA on the access and rights of way plans (Document 2.3C).	No later than the opening to public traffic of the A5/A449 link road.
District of South Staffordshire	The private means of access shown hatched blue between points FFF and GGG and MM on the access and rights of way plans (Document 2.3C).	No later than the opening to public traffic of the A5/A449 link road.
District of South Staffordshire	The private means of access shown hatched blue between points FFF and GGG and NN on the access and rights of way plans (Document 2.3C).	Upon the commencement of that part of the authorised development known as Zone A3 as shown on the parameters plans.
District of South Staffordshire	The private means of access shown hatched blue between points FFF and GGG and HHH on the access and rights of way plans (Document 2.3C).	No later than the opening to public traffic of the A5/A449 link road.
District of South Staffordshire	The turning head for Avenue Cottages shown hatched blue at point RR on the access and rights of way plans (Document 2.3A and 2.3B).	Upon the commencement of that part of the authorised development known as Zone A4a as shown on the parameters plans.

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

District of South Staffordshire	Length of new road shown hatched blue between points V and DD on the access and rights of way plans (Document 2.3A and 2.3D).	Upon the completion of that part of the authorised development in Works No. 5 which is served by that length of road.
District of South Staffordshire	Length of new road between points SS and TT shown hatched blue on the access and rights of way plans (Document 2.3D and 2.3E).	Upon the occupation of that part of the authorised development known as Zone A6 as shown on the parameters plans.
District of South Staffordshire	New rail terminal access road between points WW and XX shown on the access and right of way plans (Document 2.3A and 2.3F).	Upon the occupation of that part of the authorised development known as Zone A5a as shown on the parameters plans.
District of South Staffordshire	Length of new road between points AA1 and YY shown on the access of rights of way plans (Document 2.3D).	Upon the completion of that part of the authorised development in Zones A7a, A7b and A7c as shown on the parameters plans.
District of South Staffordshire	Length of new road between points III and JJJ shown on the access and rights of way plans (Document 2.3A and 2.3F).	Upon the occupation of that part of the authorised development known as Zone A2 on the parameters plans.

## SCHEDULE 7

Article 15

### CLASSIFICATION OF NEW HIGHWAYS

<i>(1) Area</i>	<i>(2) Extent of Street</i>	<i>(3) Classification</i>	<i>(4) Classes of Traffic</i>
District of South Staffordshire	A5/A449 link road as shown tinted orange between points marked A and B on the highway classification plans (Document 2.13A).	Classified (County A road)	All purpose

## SCHEDULE 8

Article 16

### SPEED LIMITS

## PART 1

### ROADS SUBJECT TO 30MPH SPEED LIMIT

<i>(1) Location</i>	<i>(2) Length</i>
A5/A449 link road	Shown coloured pink between points marked A and B as shown on the speed limits plans (Document 2.12A).

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

Vicarage Road link	Shown coloured pink between points marked C and C1 as shown on the speed limits plans (Document 2.12A and 2.12B).
Private Estate Roads	Shown coloured orange between points C and D as shown on the speed limits plans (Document 2.12B).
Private Estate Roads	Shown coloured orange between points marked C2 and C3 as shown on the speed limits plans (Document 2.12B).
Private Estate Roads	Shown coloured orange between points marked C4 and C5 as shown on the speed limits plans (Document 2.12B).
Private Estate Roads	Shown coloured orange between points marked E and E1 as shown on the speed limits plans (Document 2.12B).

## PART 2

### ROADS SUBJECT TO 40MPH SPEED LIMIT

<b>(1) Location</b>	<b>(2) Description</b>
Vicarage Road	Shown coloured blue between points D and E, D and G and D and F as shown on the speed limits plans (Document 2.12B).
Vicarage Road	Shown coloured blue between points F and G on the speed limits plans (Document 2.12B).

## PART 3

### ROADS SUBJECT TO 50MPH SPEED LIMIT

<b>(1) Location</b>	<b>(2) Description</b>
A5/A449 link road	Shown coloured yellow between points marked B and B1 as shown on the speed limits plans (Document 2.12A)
A5	Shown coloured yellow between points marked H and I as shown on the speed limits plans (Document 2.12A)

## PART 4

### ROADS SUBJECT TO 60MPH SPEED LIMIT

<b>(1) Location</b>	<b>(2) Description</b>
A5/A449 link road	Shown coloured green between points marked A and A1 as shown on the speed limits plans (Document 2.12A)
A449	Shown coloured green between points marked J and K as shown on the speed limits plans (Document 2.12A and 2.12C)
Crateford Lane	Shown coloured green between points marked L and L1 as shown on the speed limits plans (Document 2.12A)

Vicarage Road	Shown coloured purple between points F and F1 as shown on the speed limits plans (Document 2.12B)
Vicarage Road	Shown coloured purple between points G and G1 as shown on the speed limits plans (Document 2.12B)

SCHEDULE 9

Articles 17, 18 and 19

TRAFFIC REGULATION

**PART 1**

AMENDMENTS TO EXISTING ORDERS

<b>(1)</b> <b>Instrument/ Title</b>	<b>Statutory Order</b>	<b>(2)</b> <b>Statutory Instrument Number if applicable</b>	<b>(3) Changes</b>	<b>(4) Event</b>
The Worcester-Wolverhampton South of Stafford Trunk Road (Prohibition of Waiting) (Clearways) Order 1965		1965 No. 427	New side road Terminals Signs to be added to Highways Agency Drawing M91226008/A449_02 at A5/A449 link road.	Upon the opening of the A449 roundabout to public traffic as shown on the highway general arrangement plans (Document 2.9C).
			Prohibition of waiting on verges along the section of the A5 between points AA and BB as shown on the traffic regulation plans (Document 2.11A).	Upon the commencement of construction of the A5 roundabout as shown on the highway general arrangement plans (Document 2.9G).
The Trunk Road (A449) (Stafford Road, Coven Heath) (Clearway) Order 1986		1986 No. 885	New side road Terminals Signs to be added to Highways Agency Drawing M91226008/A449_02 at A5/A449 link road.	Upon the opening of the A449 roundabout to public traffic as shown on the highway general arrangement plans (Document 2.9C).
			Prohibition of waiting on verges along the section of the A449 between points CC and DD as shown on the traffic regulation plans (Document 2.11A and 2.11D).	Upon the commencement of construction of the relocated A449 laybys as shown on the highway general arrangement plans (Document 2.9E).

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

<p>The London-Holyhead Trunk Road (Prohibition of Waiting) (Clearways) Order 1969</p>	<p>1969 No. 1576</p>	<p>New side road</p>	<p>Upon the opening of Terminals Signs to the A5 roundabout be added to to public traffic as Highways Agency shown on the highway Drawing M91226005/ general arrangement DRA5E_01 at new plans (Document 2.9G). junction with A5/A449 link road.</p>
			<p>Prohibition of waiting Upon the commencement on verges along the of construction of the section of the A5 A5 roundabout as between points AA and shown on the highway BB as shown on the general arrangement traffic regulation plans plans (Document 2.9G). (Document 2.11A).</p>
<p>The West Midlands Trunk Road (Prohibition of Waiting) (Clearways) Amendment Order 1989</p>	<p>1989 No. 1037</p>	<p>New side road</p>	<p>Upon the opening of Terminals Signs to the A5 roundabout be added to to public traffic as Highways Agency shown on the highway Drawing M91226005/ general arrangement DRA5E_01 at new plans (Document 2.9G). junction with A5/A449 link road.</p>
			<p>Prohibition of waiting Upon the commencement on verges along the of construction of the section of the A449 relocated A449 laybys as between points CC and shown on the highway DD as shown on the general arrangement traffic regulation plans plans (Document 2.9E). (Document 2.11A and 2.11D).</p>

## PART 2

### CLEARWAYS

(1) Location	(2) Description	(3) Inclusion of prohibition of waiting on verges?	(4) Event
A5/A449 link road	Shown coloured pink between points A and B on the traffic regulation plans (Documents 2.11A and 2.11B).	No	Upon the opening of the A5/A449 link road to public traffic as shown on the highway general arrangement plans (Documents 2.9C, 2.9D, 2.9H and 2.9G).
A5/A449 link road	Shown with a dashed green line between points C and D on the	Yes	Upon the opening of the A5/A449 link road to public traffic as shown on the highway general



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	traffic regulation plans (Documents 2.11A and 2.11B).		arrangement plans (Documents 2.9C, 2.9D, 2.9H and 2.9G).
A5/A449 link road roundabout with Vicarage Road link	Shown coloured green between points E and F on the traffic regulation plans (Documents 2.11A and 2.11B).	No	Upon the opening of the A5/A449 link road roundabout with Vicarage Road link to public traffic as shown on the highway general arrangement plans (Document 2.9H).
A5/A449 link road roundabout with Vicarage Road link	Shown dashed green at between points G and H on the traffic regulation plans (Documents 2.11A and 2.11B).	Yes	Upon the opening of the A5/A449 link road roundabout with Vicarage Road link to public traffic as shown on the highway general arrangement plans (Document 2.9H).
Vicarage Road Roundabout	Shown coloured orange at point I on the traffic regulation plans (Document 2.11B).	No	Upon the opening of the Vicarage Road roundabout to public traffic as shown on the highway general arrangement plans (Document 2.9I).
Vicarage Road Roundabout	Shown dashed green at point J on the traffic regulation plans (Document 2.11B).	Yes	Upon the opening of the Vicarage Road roundabout to public traffic as shown on the highway general arrangement plans (Document 2.9I).

### PART 3

#### NO WAITING AT ANY TIME

<b>(1) Location</b>	<b>(2) Length</b>	<b>(3) Event</b>
Station Drive turning head	Between points K, L and M as shown with a dark blue line on the traffic regulation plans (Document 2.11C).	Opening of the Station Drive turning head as shown on the highway general arrangement plans (Document 2.9A).
Bus stops on the A5/A449 link road	Between points N and O and P and Q shown with a dark blue line on the traffic regulation plans (Documents 2.11A and 2.11B).	Opening of the A5/A449 link road bus stops as shown on highway general arrangement plans (Documents 2.9D and 2.9H).
Bus stops on the A449	Between points R and S and T and U shown with a yellow line on the traffic regulation plans (Documents 2.11A and 2.11C).	Opening of the A449 roundabout as shown on the highway general arrangement plans (Document 2.9C).

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

## PART 4

### LIMITED WAITING

<b>(1) Location</b>	<b>(2) Length</b>	<b>(3) Event</b>
A449 Laybys	Between points V and W and X and Y as shown with a purple line on the regulation plans (Document 2.11A).	Opening of the northbound A449 laybys as shown on the highway general arrangement plans (Document 2.9E).

## PART 5

### PROHIBITED MOVEMENTS

<b>(1) Location</b>	<b>(2) Length</b>	<b>(3) Description</b>
Avenue Cottage access on to A5	At the point shown with a light blue arrow and marked 1 at the Avenue Cottage access on to the A5 on the traffic regulation plans (Document 2.11A).	No right turn on to the A5
A5	At the point shown with a light blue arrow and marked 2 on the A5 east-bound on the traffic regulation plans (Document 2.11A).	No right turn in to Avenue Cottages
Harrisons Lane access on to A5	At the point shown with a light blue arrow and marked 3 at the Harrisons Lane access on to the A5 on the traffic regulation plans (Document 2.11A).	No right turn on to the A5
A5	At the point shown with a light blue arrow and marked 4 on the A5 west-bound on the traffic regulation plans (Document 2.11A).	No right turn in to Harrisons Lane
Poplars access on to A5	At the point shown with a light blue arrow and marked 5 at the Poplars access on to the A5 on the traffic regulation plans (Document 2.11A).	No right turn on to the A5
A5	At the point shown with a light blue arrow and marked 6 at the Poplars access on to the A5 on the traffic regulation plans (Document 2.11A).	No right turn in to the Poplars
A449	At the point shown with a light blue arrow and marked 7 on the A449 north-bound on the traffic regulation plans (Document 2.11C).	No right turn in to Station Drive
A5	At the point shown with a blue dot on the A5 east-bound on the traffic regulation plans (Document 2.11A).	No U-turns
A449	At the points marked 8, 9 and 10 with red dots on the A449 as shown on the traffic regulation plans (Document 2.11A).	No access through central reservation

**PART 6****ONE WAY STREET**

<b>(1) Location</b>	<b>(2) Length</b>	<b>(3) Direction</b>
Crateford Lane	From point Z to point Z1 along the centre line shown with a red line and arrow on the traffic regulation plans (Document 2.11A).	West to East only

**SCHEDULE 10**

Article 34

**LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN**

<b>(1) Area</b>	<b>(2) Number of land shown on land plan</b>	<b>(3) Purpose for which temporary possession may be taken</b>	<b>(4) Relevant part of the authorised development</b>
District of South Staffordshire	87a	Temporary compound for pylon works north of the A5.	Works No. 9a
	87b	Temporary compound for pylon works north of the A5.	Works No. 9a

**SCHEDULE 11**

Article 25

**LAND IN WHICH NEW RIGHTS MAY BE CREATED**

<b>(1) Area</b>	<b>(2) Plot of land shown on land plan</b>	<b>(3) Relevant part of the authorised development</b>
District of South Staffordshire	74, 76 and 78	Works No. 6
District of South Staffordshire	87	Works No. 9a
District of South Staffordshire	97	Works Nos. 7 and 11
District of South Staffordshire	98	Works No. 11

**SCHEDULE 12**

Article 25

**MODIFICATIONS OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS***Compensation enactments*

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

**Status:** Point in time view as at 21/10/2020.

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

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

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) (powers of entry) of the 1965 Act (as modified by paragraph 5(5) of Schedule 12 to the West Midlands Rail Freight Interchange Order 2020 <sup>M73</sup>);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 12 to the West Midlands Rail Freight Interchange Order 2020) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

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

**Marginal Citations**

M73 [S.I. 2020/511](#).

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973 <sup>M74</sup> has effect subject to the modifications set out in sub-paragraph (2).

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

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

**Marginal Citations**

M74 [1973 c. 26](#).

**Application of Part 1 of the 1965 Act**

4. Part 1 of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act, and modified by article 30 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under article 24 (compulsory acquisition of land) applies to the compulsory acquisition of a right by the creation of a new right under article 25 (compulsory acquisition of rights)—

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

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

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

- (a) the right acquired or to be acquired; or

(b) the land over which the right is or is to be exercisable.

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

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

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

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(5) Section 11<sup>M75</sup> (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 24 (compulsory acquisition of land), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right; and sections 11A<sup>M76</sup> (powers of entry: further notices of entry), 11B<sup>M77</sup> (counter-notice requiring possession to be taken on a specified date), 12<sup>M78</sup> (penalty for unauthorised entry) and 13<sup>M79</sup> (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20<sup>M80</sup> (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act, as modified by article 30(2) (modification of Part 1 of the 1965 Act) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 substitute—

#### “SCHEDULE 2A

#### COUNTER-NOTICE REQUIRING PURCHASE OF LAND

##### **Introduction**

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act) of the West Midlands Rail Freight Interchange Order 2020 in respect of the land to which the notice to treat relates.

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

### **Counter-notice requiring purchase of land**

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

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

### **Response to counter-notice**

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

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

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

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

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

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

### **Determination by Upper Tribunal**

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

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

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

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

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

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

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

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

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

#### Marginal Citations

**M75** Section 11 was amended by section 34(1) of, and Schedule 4 to, the [Acquisition of Land Act 1981 \(c. 67\)](#), [sections 186\(2\), 187\(2\)](#) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 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 \(No. 1\)](#) and [S.I. 2009/1307](#).

**M76** Section 11A was inserted by section 186(3) of the [Housing and Planning Act 2016 \(c. 22\)](#).

**M77** Section 11B was inserted by section 187(3) of the [Housing and Planning Act 2016 \(c.22\)](#).

**M78** Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the [Courts Act 1971 \(c. 23\)](#).

**M79** Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#).

**M80** Section 20 was amended by paragraph 4 of Schedule 15 to the [Planning and Compensation Act 1991 \(c. 34\)](#) and [S.I. 2009/1307](#).

## SCHEDULE 13

Articles 42 and 43

### PROTECTIVE PROVISIONS

#### PART 1

##### FOR PROTECTION OF RAILWAY INTERESTS

**1.** The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

**2.** In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” are to be construed accordingly;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise powers under section 8 (licences) of the Railways Act 1993 <sup>M81</sup>;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006 <sup>M82</sup>) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network

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Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

#### Marginal Citations

- M81** 1993 c. 43. Section 8 was amended by section 216 of, and paragraphs 1 and 4 of Schedule 17 and Part 4 of Schedule 31 to, the [Transport Act 2000 \(c. 38\)](#), [paragraphs 1](#) and 5 of Schedule 2 to the [Railways and Transport Safety Act 2003 \(c. 20\)](#), [paragraph 3](#) of Schedule 1, and Part 1 of Schedule 13, to the [Railways Act 2005 \(c. 14\)](#) and S.I. 2015/1682.
- M82** 2006 c. 46.

**3.—(1)** Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

**4.—(1)** The undertaker must not exercise the powers conferred by articles 22 (authority to survey and investigate the land), 24 (compulsory acquisition of land), 25 (compulsory acquisition of rights), 27 (power to override easements and other rights), 34 (temporary use of land for carrying out the authorised development) and 35 (temporary use of land for maintaining the authorised development) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not, in the exercise of the powers conferred by this Order, prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 <sup>M83</sup> of the 1990 Act or article 32 (statutory undertakers and operators of the electronic communications code



network), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not, under the powers of this Order, acquire or use, or acquire new rights over, any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

#### **Marginal Citations**

**M83** [Section 272](#) was amended by paragraph 103(1) and (2) of Schedule 17 to the [Communications Act 2003](#) (c. 21).

**5.—(1)** The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 47 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

**6.—(1)** Any specified work and any protective works to be constructed by virtue of paragraph 5(4) of this Part of this Schedule must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;

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- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3) of this Part of this Schedule, pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) of this Part of this Schedule provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**10.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) of this Part of this Schedule or in constructing any protective works under the provisions of paragraph 5(4) of this Part of this Schedule including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**11.—(1)** In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

“Network Rail's apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(1) of this Part of this Schedule for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1) of this Part of this Schedule) in order to identify all potential causes of EMI and the measures required to eliminate them;

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- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) of this Part of this Schedule has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) such modifications must be carried out and completed by the undertaker in accordance with paragraph 6 of this Part of this Schedule.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) of this Part of this Schedule applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) of this Part of this Schedule any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 47 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Electrical Engineers.

**12.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property,

the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**13.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**14.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**15.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) is to include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

**16.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the

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**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

amount of the relevant costs mentioned in paragraph 15 of this Part of this Schedule) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

**17.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**18.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**19.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

**20.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (benefit of order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**21.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 45 (certification of plans and documents) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

## **PART 2**

### **FOR THE PROTECTION OF HIGHWAYS ENGLAND**

#### **Application**

**1.** The provisions of this Part of this Schedule have effect, and apply to the trunk road works, unless otherwise agreed in writing between the undertaker and Highways England.

#### **Interpretation**

**2.—(1)** The terms used in this Part of this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) which will prevail.

(2) In this Part of this Schedule—

“as built information” means one digital copy of the following information where applicable to the phase in question—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used;
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for works carried out;
- (f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;
- (g) organisation and methods manuals for all products used in the construction of the trunk road works;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during the construction phase of the trunk road works;
- (j) RSA 3 and exceptions agreed;
- (k) health and safety file; and
- (l) other such information as is necessary to enable Highways England to update all relevant databases and to ensure compliance with the Highways England Asset Data Management Manual as in operation at the relevant time including CCTV surveys.

“the bond sum” means the sum equal to 120% of the cost of the carrying out of the phase of the trunk road works concerned (to include all costs including the commuted sum) or such other sum agreed between the undertaker and Highways England;

“the cash surety” means the sum of £150,000 or such other sum agreed between the undertaker and Highways England;

“commuted sum” means such sum as calculated for each phase as provided for in paragraph 10 of this Part of this Schedule to be used to fund the future cost of maintaining the trunk road works;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the trunk road works or any phase of the trunk road works and approved by Highways England in accordance with paragraph 3(3) of this Part of this Schedule;

“county highway works” means those parts of works Nos. 4 and 7 shown coloured pink and yellow on the future highway maintenance plans the general arrangement of which is shown on the highways general arrangement plans and any ancillary works thereto;

“detailed design information” means drawings, specifications and calculations as appropriate for the following, and in accordance with the general arrangements of the trunk road works shown on the highway general arrangement plans unless otherwise agreed between Highways England and the undertaker—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting Road Restraint Risk Appraisal Process assessment (RRRAP);
- (d) drainage and ducting as required by Series 500 of the Specification for Highway Works, HD43/04, IAN 147/12 and SD15 Parts 1-6 inclusive;

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures and any required structural approval in principle (AIP);
- (l) landscaping;
- (m) agreed departures from the Designs Manual for Roads and Bridges standards;
- (n) a report of walking, cycling and horse riding carried out in accordance with the Design Manual for Roads and Bridges Standard KD42/17 or any successor document;
- (o) Stage 2 Road Safety Audit and exceptions agreed, and in the event that any works are not commenced within five years of the date of the Stage 1 Road Safety Audit a further Stage 1 Road Safety Audit and exceptions agreed;
- (p) utilities diversions;
- (q) topographical survey;
- (r) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any successor document; and
- (s) health and safety information including any asbestos survey required by GD05/16 or any successor document,

where relevant to the Phase concerned;

“dilapidation survey” means a survey of the condition of the roads, bridges and retaining walls which will be the subject of the physical works comprised in the phase concerned;

“estimated costs” means the estimated costs in respect of each phase agreed in accordance with paragraph 5(1)(b) to (d) and (5) of this Part of this Schedule;

“the excess” means the amount by which Highways England estimates that the costs referred to in paragraph 5(1)(b) to (d) of this Part of this Schedule will exceed the estimated costs in accordance with paragraph 5(5)(b);

“nominated persons” means the undertaker's representatives or the contractors' representatives on site during the carrying out of the trunk road works as notified to Highways England from time to time;

“phase” means that part of the trunk road works which is to be carried out in separate phases within the area identified separately as Works Nos. 7 on the works plans such phasing arrangements to be as agreed with Highways England;

“programme of works” means a document setting out the sequence and timetabling of the phase of the trunk road works in question;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard, and the approved audit team will include a member of Highways England West Midlands Asset Delivery Road Safety Team;

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard HD 19/15 or any successor document;



“trunk road works” means that part of Works Nos. 4 or 7 shown coloured green and blue on the future highway maintenance plans, the general arrangement of which is shown on the relevant highway general arrangement plans and any ancillary works thereto;

“utilities” means any pipes, wires, cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice.

### **Prior Approvals and Security**

3.—(1) No work must commence on any phase of the trunk road works until the detailed design information and a programme of works in respect of that phase has been submitted to and approved by Highways England.

(2) Highways England must nominate a person who will be a single point of contact on behalf of Highways England for consideration of the detailed design information and who will co-ordinate the Highways England response to the details submitted.

(3) No works must commence on any phase of the trunk road works other than by a contractor employed by the undertaker for that phase but first approved by Highways England.

(4) No work must commence on any phase of the trunk road works until Highways England has agreed the bond sum for that phase and the undertaker has provided security for the carrying out of those works as provided for in paragraph 9 of this Part of this Schedule or some other form of security acceptable to Highways England.

(5) No work must commence on any phase of the trunk road works until Stage 1 and Stage 2 Road Safety Audits have been carried out in respect of that phase and all recommendations raised incorporated into an amended design approved by Highways England or secured by agreement with Highways England pursuant to [F16article 20 (agreements with highway authorities)] or any relevant exceptions approved by Highways England.

(6) No work must commence on any phase of the trunk road works until the undertaker demonstrates to the satisfaction of Highways England that the walking, cycling and horse riding assessment and review process for that phase has been adhered to in accordance with the Design Manual for Roads and Bridges Standard HD 42/17 or any successor document.

(7) No work must commence on any phase of the trunk road works until a scheme of traffic management has been submitted by the undertaker and approved by Highways England for that phase, such scheme to be capable of amendment by agreement between the undertaker and Highways England from time to time.

(8) No work must commence on any phase of the trunk road works until stakeholder liaison has taken place for that phase in accordance with a scheme for such liaison agreed between the undertaker and Highways England.

(9) No work must commence on any phase of the trunk road works until Highways England has approved the audit brief and CVs for all road safety audits and exceptions to items raised if appropriate for that phase in accordance with the Road Safety Audit Standard.

(10) No work must commence on any phase of the trunk road works until the undertaker has agreed the commuted sum for that phase with Highways England to be calculated in accordance with paragraph 10 of this Part of this Schedule.

(11) No work must commence on any phase of the trunk road works until a dilapidation survey for that phase has been carried out by the undertaker and has been submitted to and approved in writing by Highways England.

(12) No work must commence on any phase of the trunk road works until the scope of all routine maintenance to be carried out by the undertaker during the construction of the phase concerned has

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**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

been agreed in writing by Highways England, such maintenance only to include winter maintenance of the phase concerned when—

- (a) access to carry out such maintenance by Highways England is not available by virtue of the works being carried out at that phase; and
- (b) any winter maintenance is needed immediately prior to the opening of any carriageway to traffic when that carriageway had been closed for the purposes of the carrying out of the phase concerned.

#### Textual Amendments

**F16** Words in Sch. 13 Pt. 2 para. 3(5) substituted (21.10.2020) by The West Midlands Rail Freight Interchange (Correction) Order 2020 (S.I. 2020/1163), arts. 1, 2(12)

#### Carrying out of works

4.—(1) The undertaker must prior to commencement of each phase of the trunk road works give Highways England 28 days' notice in writing of the date on which that phase will start unless otherwise agreed by Highways England.

(2) The undertaker must comply with Highways England's usual road space booking procedures prior to and during the carrying out of each phase of the trunk road works and no trunk road works for which a road space booking is required is to commence without a road space booking having first been secured such road space booking not to be unreasonably withheld or delayed.

(3) Each phase of the trunk road works must be carried out to the satisfaction of Highways England in accordance with—

- (a) the relevant detailed design information and a programme of works approved pursuant to paragraph 3(1) of this Part of this Schedule or as subsequently varied by agreement between the undertaker and Highways England;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works), all relevant interim advice notes, the Traffic Signs Manual and Traffic Signs Regulations and General Directions 2016 <sup>M84</sup> and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent with the general arrangement of the trunk road works as shown on the highways general arrangement plans or a departure from such standards has been approved by Highways England;
- (c) such approvals or requirements of Highways England that are required by the provisions of paragraph 3 of this Part of this Schedule to be in place prior to the relevant phase of the trunk road works being undertaken; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 <sup>M85</sup> and in particular the undertaker, as client, must ensure that all client duties (as defined in those regulations) are undertaken to the satisfaction of Highways England.

(4) The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must be previously notified to the undertaker by Highways England) to gain access to the trunk road works and county highway works for the purposes of inspection and supervision and the undertaker must provide to Highways England contact details of the nominated persons with whom Highways England should liaise during the carrying out of the trunk road works.

(5) At any time during the carrying out of the trunk road works the nominated persons must act upon any reasonable request made by Highways England in relation to the carrying out of the trunk road works as soon as practicable following such request being made to the nominated persons save

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

to the extent that the contents of such request are inconsistent with or fall outside the contractor's obligations under its contract with the undertaker or the undertaker's obligations in this Order.

(6) If at any time the undertaker does not comply with any of the terms of this Part of this Schedule in respect of any phase of the trunk road works having been given notice of an alleged breach and an adequate opportunity to remedy it by Highways England then Highways England on giving the undertaker 14 days' notice in writing to that effect be entitled to—

- (a) carry out and complete that phase of the trunk road works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or
- (b) carry out such necessary works of reinstatement of the highway and other land and premises of Highways England,

and in either case the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(7) If at any time the undertaker in carrying out the authorised development causes any damage or disruption to the strategic road network not hereby authorised then Highways England is to give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of Highways England, Highways England, on giving to the undertaker 7 days' notice in writing to that effect, is entitled to carry out such necessary works as Highways England acting reasonably deem appropriate to remedy the damage or disruption, and the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(8) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking such action as deemed appropriate, without prior notice to the undertaker, in the event of an emergency or danger to the public. The cost to Highways England of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the authorised development. This provision applies to all areas of the authorised development including any area of traffic management deployed under the traffic management plan approved pursuant to paragraph 3(7) of this Part of this Schedule to facilitate delivery of the authorised development.

(9) The undertaker in carrying out each phase of the trunk road works must at its own expense divert or protect all utilities as may be necessary to enable the trunk road works to be properly carried out and all agreed alterations to existing services must be carried out to the reasonable satisfaction of Highways England.

(10) During the construction of each phase of the trunk road works the undertaker is responsible for all routine maintenance at its cost within that phase (including winter maintenance when required to be undertaken by the undertaker in accordance with paragraph 3(12) of this Part of this Schedule). All routine maintenance must be carried out in accordance with the scope of routine maintenance operations agreed by Highways England in accordance with paragraph 3(12).

#### **Marginal Citations**

**M84** [S.I. 2016/362](#).

**M85** [S.I. 2015/51](#).

#### **Payments**

**5.—(1)** The undertaker must fund the whole of the cost of the trunk road works and all costs incidental to the trunk road works and must also pay to Highways England in respect of each phase of the trunk road works a sum equal to the whole of any costs and expenses which Highways England incur including costs and expenses for using external staff and resources as well as costs and expenses

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

of using in-house staff and resources in relation to the trunk road works and arising out of them and their implementation, including—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that phase;
- (b) costs in relation to agreeing the programme of works for that phase;
- (c) the carrying out of supervision of that phase; and
- (d) all administrative costs in relation to paragraphs (a) and (b),

together comprising “the estimated costs”.

(2) The sums referred to in sub-paragraph (1) do not include any sums payable from the undertaker to the contractor but do include any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs.

(3) The undertaker must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the trunk road works provided that this paragraph does not apply to the making of any orders which duplicate orders contained in this Order.

(4) The undertaker must make the payments of the estimated costs as follows—

- (a) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub-paragraph (1)(a), (b) and (d) to Highways England prior to Highways England undertaking those tasks;
- (b) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub-paragraph (1)(c) prior to commencing that phase;
- (c) if at any time after the payment in respect of a phase referred to in sub-paragraph (4)(a) and (b) has become payable and Highways England reasonably estimates that the costs in respect of that phase referred to in sub-paragraph (1) will exceed the estimated costs for that phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the estimated costs (“the excess”) and the undertaker must pay to Highways England within 28 days of the date of that notice a sum equal to the excess.

(5) Within 91 days of the issue of the handover certificate for each phase of the trunk road works in accordance with paragraph 7 of this Part of this Schedule, Highways England must give the undertaker a final account of the costs referred to in sub-paragraph (1) and within 28 days from the expiry of the 91-day period—

- (a) if the account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs Highways England must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the 1961 Act for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

### **Provisional certificate**

6.—(1) As soon as—

- (a) each phase of the trunk road works has been completed; and
- (b) a Stage 3 Road Safety Audit for that phase has been carried out and any resulting recommendations complied with Highways England and any exceptions agreed,

Highways England must issue a provisional certificate of completion in respect of that phase, such certificate not to be unreasonably withheld or delayed.

### **Handover certificate and defects period**

7.—(1) As soon as, in respect of a phase—

- (a) the undertaker has carried out a dilapidation survey in accordance with paragraph 3(11) of this Part of this Schedule and completed any remedial works necessary to bring that area into as good a condition as when it was originally surveyed, such works to be first agreed with Highways England;
- (b) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense together with any ancillary equipment that will become the responsibility of Highways England; and
- (c) the as built information has been provided to Highways England,

Highways England must forthwith issue a handover certificate in respect of that phase such certificate not to be unreasonably withheld or delayed.

(2) The undertaker must at its own expense remedy any defects in any phase of the trunk road works as are reasonably required to be remedied by Highways England during a period of 12 months from the date of the handover certificate in respect of that phase. All identified defects are to be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification (urgency to be determined at the absolute discretion of Highways England);
- (b) in respect of matters which Highways England consider to be serious defects or faults, within 14 days of receiving notification or, if a road space booking is required at the time when the road space is available, whichever is the later; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification or, if a road space booking is required, at the time when the road space is available, whichever is the later.

(3) Following the issue of the handover certificate in respect of a phase, Highways England is to be responsible for the trunk road works within that phase which will thereafter be maintained by and at the expense of Highways England.

(4) The undertaker must submit Stage 4 Road Safety Audits for each phase as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such.

### **Final certificate**

8. Highways England must issue the final certificate in respect of each phase at the expiration of the 12-month period in respect of that phase referred to in paragraph 7(2) of this Part of this Schedule or if later on the date on which any defects or damage arising from defects during that period have been made good to the reasonable satisfaction of Highways England such certificate not to be unreasonably withheld or delayed.

*Status: Point in time view as at 21/10/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)*

## Security

**9.**—(1) Subject to paragraph 3(4) of this Part of this Schedule the undertaker must provide security for the carrying out of the trunk road works as follows—

- (a) prior to the commencement of each phase, the trunk road works within that phase must be secured by a bond from a bondsman first approved by Highways England drafted substantially as detailed in Form 1 contained in paragraph 17 of this Part of this Schedule, or such other form that may be agreed between the undertaker and Highways England, to indemnify Highways England against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that phase under the provisions of this Part of this Schedule provided that the maximum liability of the bond does not exceed the bond sum relating to that phase; and
- (b) prior to the commencement of the trunk road works the undertaker must provide the cash surety which may be utilised by Highways England in the event of the undertaker failing to meet its obligations to make payments under paragraph 5 of this Part of this Schedule or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker (which will be a single cash surety for the entirety of the trunk road works).

(2) Each bond sum and the cash surety (the latter in respect of the final phase only) must be progressively reduced as follows—

- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the contractors) from the undertaker of the payments made from time to time to the contractor Highways England must in writing authorise the reduction of the bond sum by such proportion of the bond sum as amounts to 80% of those payments provided that an evaluation of the trunk road works completed and remaining has been carried out by the undertaker and audited and agreed by Highways England to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the contractors. Highways England will only be required to provide the said authorisation if it is satisfied that the monies remaining secured by the bond sum will be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the trunk road works plus an additional 20%;
- (b) within 20 working days of completion of each phase of the trunk road works (as evidenced by the issuing of the provisional certificate in respect of that phase in accordance with paragraph 6(1) of this Part of this Schedule) Highways England must in writing release the bond provider from its obligations in respect of 80% of the bond sum relating to that phase (“the revised bond sum”) save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs; and
- (c) within 20 working days of the issue of the final certificate for each phase of the trunk road works referred to in paragraph 8 of this part of this Schedule, Highways England must in writing release the bond provider from its obligations in respect of the revised bond sum relating to that phase and (in respect of the final phase) release the remainder of the cash surety to the undertaker save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs.

## Commuted sums

**10.** The undertaker must pay to Highways England the commuted sum for the relevant phase calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation dated 18th January 2010 within 28 days of the date of that phase of the trunk road works becomes maintainable by Highways England in accordance with paragraph 7(3) of this Part of this Schedule.

## **Insurance**

**11.** The undertaker must prior to commencement of the trunk road works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the trunk road works or any part thereof by the undertaker.

## **Indemnification**

**12.—(1)** The undertaker must in relation to the carrying out of the trunk road works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify Highways England from and against all costs expenses damages losses and liabilities arising from or in connection with or ancillary to any claim demand action or proceedings resulting from the design and carrying out of the trunk road works provided that—

- (a) the foregoing indemnity does not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of Highways England or its officers, servants, agents or contractors or any person or body for whom it is responsible;
- (b) Highways England must notify the undertaker immediately upon receipt of any claim; and
- (c) Highways England must, following the acceptance of any claim, notify the quantum to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to Highways England the amount specified as the quantum of such claim.

(2) The undertaker must notify Highways England of the intended date of opening of each phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify Highways England of the actual date that each phase is open to public traffic on each occasion within 14 days of that occurrence.

## **Warranties**

**13.** The undertaker must procure warranties from the contractor and designer of each phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that phase including the selection of materials, goods, equipment and plant such warranties to be provided to Highways England before that phase commences.

## **Land transfer**

**14.—(1)** Following the issuing of the final certificates for all the trunk road works Highways England may serve notice on the undertaker that it wishes to take a freehold transfer of land within the then extent of highway land which is not in the ownership of Highways England but has been acquired by the undertaker for the purposes of carrying out the trunk road works.

(2) If the undertaker receives a notice under sub-paragraph (1), the undertaker must co-operate in a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to Highways England which includes the undertaker being responsible for the reasonable legal costs incurred by Highways England in connection with such transfer.

## **Approvals**

**15.—(1)** Any approvals, certificates, consents or agreements required of or sought from or with Highways England in accordance with the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing.

*Status: Point in time view as at 21/10/2020.*

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(2) If Highways England fail to notify the undertaker of its decision in respect of any approval, consent or agreement in accordance with the provisions of this Part of this Schedule within 28 days of the specified day, the undertaker may serve upon Highways England written notice requiring Highways England to give their decision within a further 28 days beginning on the date upon which Highways England received written notice from the undertaker. Subject to sub-paragraph (3), 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 given the relevant approval, consent or agreement.

(3) Any further notice given by the undertaker to Highways England under sub-paragraph (2) must include a written statement that the provisions of sub-paragraph (2) apply to the relevant approval, consent or agreement.

(4) In this paragraph “specified day” means—

- (a) the day on which particulars of the matter are submitted to Highways England under the provisions of this Part of this Schedule; or
- (b) the day on which the undertaker provides Highways England with any further particulars of the matter that have been reasonably requested by Highways England within 14 days of the date in sub-paragraph (2)(a),

whichever is the later.

### **Expert Determination**

**16.**—(1) Article 47 (arbitration) does not apply to this Part of this Schedule except in respect of sub-paragraph (5).

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 47.

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

### **Bond form**

**17.** Form 1 as referred to in paragraph 9—



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Form 1

Bond – Highways England

**BY THIS BOND** [ ] [Company Regn No ] whose registered office is situate at [ ] ("the undertaker") and [ ] [Company Regn No ] whose registered office is situate at [ ] ("the Surety") are jointly and severally bound to [ ] of [ ] ("the [ ]") this [ ] day of [ ] 202[ ] in the sum of [ ] pounds (£ [ ]) Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

**WHEREAS** under a Development Consent Order known as the West Midlands Interchange Order 2020 ("the DCO") the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to Highways England such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 2 of Schedule 13 to the DCO on the undertaker's part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by Highways England thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by Highways England under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of Highways England shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 9 of Part 2 of Schedule 13 to the DCO

[Attestation]

## PART 3

### FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY

#### Application

1. The provisions of this Part of this Schedule have effect, and apply to the county highway works, unless otherwise agreed in writing between the undertaker and the local highway authority.

#### Interpretation

2.—(1) The terms used in this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) which will prevail.

(2) In this Schedule—

“approval in principle” means the document, which records the agreed basis and criteria for the detailed design or assessment of a highway structure.

“as built information” means one electronic copy of the following information where applicable to the phase in question—

- (a) as constructed drawings in both PDF AutoCAD DWG, MX and GIS formats for anything designed by the undertaker;
- (b) list of suppliers and materials, test results and CCTV surveys;
- (c) product data sheets, technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works
- (e) method statements for works carried out;
- (f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) health and safety file under the Construction (Design and Management) Regulations 2015;
- (j) test results and records; and
- (k) other such information as is readily available to the undertaker and may be reasonably required by the local highway authority to be used to update any relevant databases;

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“bond” means a bond from a surety approved by the local highway authority for the bond sum drafted substantially as detailed in Form 2 contained in paragraph 15 of this Part of this Schedule;

“the bond sum” means the sum equal to 120% of the estimated costs of the carrying out of the phase of the county highway works concerned or such other sum agreed between the undertaker and the local highway authority;

“commuted sum” means such sum as calculated by the local highway authority in accordance with paragraph 7(2)(c) of this Part of this Schedule for any structure within each phase to be used to fund the future cost of maintaining such structures;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the county highway works or any phase of the county highway works and approved by the local highway authority in accordance with paragraph 3(2) of this Part of this Schedule;

“county highway works” means those parts of Works Nos. 4 and 7 coloured pink and yellow on the future highway maintenance plans the general arrangement of which is shown on the highway general arrangement plans and any ancillary works;

“defects period” means a period of twelve months from the date of the provisional certificate or longer period if agreed between the undertaker and the local highway authority in which all defects arising from the county highway works must be rectified by the undertaker;

“detailed design information” means the following drawings, specifications and other information which must be in accordance with the general arrangements shown on the highway general arrangements plans unless otherwise agreed between the local highway authority and the undertaker—

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraint systems (vehicle and pedestrian) and supporting Road Restraint Risk Assessment Process assessment (RRRAP);
- (d) drainage and ducting;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification;
- (f) kerbs, footways and paved areas;
- (g) traffic signs, signals and road markings;
- (h) road lighting (including columns, brackets and bat hop-overs);
- (i) electrical work for road lighting and traffic signs;
- (j) highway structures and any required certification in accordance with BD2/12;
- (k) agreed departures from Standard;
- (l) landscaping;
- (m) utilities diversions; and
- (n) wildlife crossings,

where relevant to the phase concerned;

“estimated costs” means the estimated costs in respect of each phase agreed in accordance with paragraph 5(1) of this Part of this Schedule;

“the excess” means the amount by which the county highway authority estimates that the costs referred to in paragraph 5(1) of this Part of this Schedule will exceed the estimated costs in accordance with paragraph 5(5)(b) of this Part of this Schedule;

“final certificate” means the certificate issued by the local highway authority to the undertaker for each phase to certify that the defects period has been completed to the satisfaction of the local highway authority;

“nominated persons” means the undertaker's representatives or the contractors' representatives on site during the carrying out of the county highway works;

“phase” means a phase of the county highway works which are to be carried out in separate phases such phases to be agreed with the local highway authority;

“programme of works” means a document setting out the sequence and timetabling of works for the phase in question;

“provisional certificate” means the certificate issued by the local highway authority to the undertaker for each phase of the county highway works to certify that in the opinion of the local highway authority the county highway works perform the function for which they were intended and are complete except for minor items not affecting safety;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard;

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard GG119 or any successor document;

“satisfaction of the local highway authority” means the normal standards of the local highway authority in approving the design construction and/or rectification of defects of equivalent highway works applied elsewhere within their administrative area; and

“technical approval authority” means the organisation responsible for agreeing the approval in principle and subsequently accepting the relevant certificates for all highway structures; and

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

### **Prior Approvals and Security**

**3.—(1)** The local highway authority is the technical approval authority in respect of all highway structures included in the county highway works, including the bridge which will carry the A5/A449 link road over the railway and canal, and the approval in principle for all such highway structures must be submitted to the local highway authority prior to any work commencing on the detailed design for any such highway structure.

(2) No work must commence on any phase until the detailed design information and a programme of works in respect of that phase has been submitted to and approved by the local highway authority.

(3) No works must commence on any phase other than by a contractor employed by the undertaker but first approved by the local highway authority.

(4) No work must commence on any phase until the undertaker has provided security for the carrying out of those works as provided for in paragraph 9 of this Part of this Schedule or some other form of security acceptable to the local highway authority.

(5) No work must commence on any phase until a Stage 2 Road Safety Audit has been carried out in respect of that phase and as necessary all issues raised incorporated into an amended design approved by the local highway authority or any relevant exceptions approved by the local highway authority.

(6) No work must commence on any phase until traffic management provisions have been agreed with the local highway authority.

(7) No work must commence on any phase until any land within that phase not within the public highway which will become public highway as a result of the authorised works is in the ownership of the undertaker.

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### **Carrying out of works**

4.—(1) The undertaker must prior to commencement of each phase give the local highway authority 14 days' notice in writing of the proposed date on which that phase will start.

(2) The undertaker must give the local highway authority 14 days' notice of the road space required for the carrying out of each phase.

(3) Each phase must be carried out to the satisfaction of the local highway authority in accordance with—

- (a) the relevant detailed design information and a programme of works approved pursuant to paragraph 3(1) of this Part of this Schedule or as subsequently varied by agreement between the undertaker and the local highway authority;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works) and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent with the Highway General Arrangement Plans (Documents 2.9A – 2.9K) or a departure from such standards has been approved by the local highway authority or such approvals or requirements of the local highway authority in paragraph 3 of this Part of this Schedule that need to be in place prior to the works being undertaken; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 and in particular the undertaker must ensure that all client duties (as defined in those regulations) are satisfied.

(4) The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by the local highway authority (whose identity must have been previously notified to the undertaker by the local highway authority) to gain access to the county highway works for the purposes of inspection and supervision and the undertaker must provide to the local highway authority contact details of the nominated persons with whom the local highway authority should liaise during the carrying out of the county highway works.

(5) The undertaker must permit attendance by representatives of the local highway authority at all pre-contract and progress meetings held in relation to each phase.

(6) The undertaker must provide shared working facilities including access to welfare and office facilities for the local highway authority for the duration of each phase including the defects period unless otherwise agreed.

(7) The undertaker must during the period in which the county highway works are carried out maintain the flow of traffic and safeguard the passage of pedestrians along any street on which the county highway works are being carried out and maintain, or provide temporary alternative for all accesses (including, for the avoidance of doubt, private accesses) affected thereby or in the vicinity thereof.

(8) At any time during the carrying out of the county highway works the nominated persons must act upon any reasonable request made by the local highway authority in relation to the carrying out of the county highway works as soon as practicable following such request being made to the nominated persons save to the extent that the contents of such request are inconsistent with or fall outside the contractor's obligations under its contract with the undertaker or the undertakers' obligations in this Order.

(9) If at any time the undertaker does not comply with any of the terms of this Part of this Schedule in respect of any phase having been given one month's notice of an alleged breach by the local highway authority, then the undertaker must within 14 days of receipt of a demand by the local highway authority pay to the county highway authority the sum of the local highway authority's proper estimate of completing that phase and any maintenance works which the undertaker would have been responsible for, and if the undertaker fails to pay the demand from the local highway

authority within 14 days, the local highway authority is entitled to use the bond to meet the cost of completing the county highway works on behalf of the undertaker.

(10) Nothing in this Part of this Schedule prevents the local highway authority from carrying out any work or taking such action as deemed appropriate, without prior notice to the undertaker, in the event of an emergency or danger to the public. The cost to the local highway authority of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the county highway works, and the local highway authority is entitled to utilise the bond should the undertaker fail to pay any costs arising from this sub-paragraph within 14 days of a demand for such costs being made by the local highway authority.

(11) The undertaker in carrying out each phase must at its own expense divert or protect all utilities as may be necessary to enable the local highway works to be properly carried out and all agreed alterations to existing services must be carried out to the satisfaction of the local highway authority acting reasonably.

## Payments

5.—(1) The undertaker must fund the whole of the cost of the county highway works and all costs incidental to the county highway works and must also pay to the local highway authority in respect of each phase in accordance with sub-paragraph (4) a sum equal to the whole of any costs and expenses which the local highway authority incur, including costs and expenses for using external staff and resources as well as costs and expenses of using in-house staff and resources in relation to the county highway works and arising out of them and their implementation including—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that phase;
- (b) costs in relation to agreeing the programme of works for that phase;
- (c) the carrying out of supervision of that phase; and
- (d) all legal and administrative costs in relation to paragraphs (a) and (b),

together comprising “the estimated costs”.

(2) The undertaker must pay to the local highway authority upon demand the total costs properly and necessarily incurred by the local highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the county highway works provided that this paragraph does not apply to the making of any orders which duplicate orders contained in this Order.

(3) The undertaker and the local highway authority must agree a schedule of the estimated costs to be incurred pursuant to sub-paragraph (1) in respect of each phase prior to the commencement of that phase.

(4) The undertaker must make the payments referred to in sub-paragraph (1) as follows—

- (a) the undertaker must pay a sum equal to the agreed estimated costs in respect of a phase prior to commencing that phase; and
- (b) if at any time or times after the payment in respect of a phase referred to in sub-paragraph (4)(a) has become payable the local highway authority reasonably estimates that the costs in respect of that phase referred to in sub-paragraph (1) will exceed the estimated costs for that phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the estimated costs (“the excess”) and the undertaker must pay to the local highway authority within 28 days of the date of that notice a sum equal to the excess.

(5) If the local highway authority has received the as built information within 91 days of the issue of the final certificate for the final phase of the A5/A449 link road pursuant to paragraph 7 of this Part of this Schedule, or for each phase pursuant to paragraph 8 of this Part of this Schedule, as

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the case may be, the local highway authority must give the undertaker a final account of the costs referred to in sub-paragraph (1) and within 28 days from the expiry of the 91-day period—

- (a) if the account shows a further sum as due to the local highway authority the undertaker must pay to the local highway authority the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs the local highway authority must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the Base Rate of Lloyds Bank Plc for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

#### **Provisional certificate and defects period**

6.—(1) As soon as each phase has been completed and a Stage 3 Road Safety Audit for that phase has been carried out and any resulting recommendations complied with to the satisfaction of the local highway authority, the local highway authority must immediately issue a provisional certificate of completion in respect of that phase, such certificate not to be unreasonably withheld or delayed.

(2) The undertaker must at its own expense remedy any defects in that phase identified by the local highway authority to the satisfaction of the local highway authority acting reasonably during the defects period in respect of that phase.

(3) The undertaker must submit Stage 4(a) (12 months after completion of each phase) and Stage 4(b) (36 months after completion of each phase) Road Safety Audits as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must at its own expense comply with the findings of the Stage 4(a) and 4(b) Road Safety Audits to the satisfaction of the local highway authority acting reasonably.

(4) The local highway authority must approve the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate in accordance with the Road Safety Audit Standard.

#### **Final certificate – except for A5/A449 link road**

7.—(1) The provisions of this paragraph apply to all the county highway works with the exception of the A5/A449 link road.

(2) The undertaker must apply to the local highway authority for the issue of the final certificate in respect of each phase of the works to which this paragraph applies at the expiration of the defects period in respect of that phase) or if later on the date on which any defects or damage arising from defects during the defects period have been made good to the satisfaction of the local highway authority acting reasonably, and when making such application the undertaker must submit to the local highway authority—

- (a) as built information of the relevant phase; and
- (b) a plan, for approval, clearly identifying the extent of any land which is to be highway maintainable at public expense by the local highway authority which must be in accordance with the detailed design information but reflecting the as built outcome.

(3) If the provisions of paragraph 7(2) of this Part of this Schedule are complied with to the satisfaction of the local highway authority, the local highway authority must immediately issue a final certificate for the phase concerned, such certificate not to be unreasonably withheld or delayed.

#### **Final certificate – A5/A449 link road**

8.—(1) The provisions of this paragraph apply only to the A5/A449 link road.

(2) The undertaker must apply to the local highway authority for the issue of the final certificate in respect of the entirety of the A5/A449 link road at the expiration of the defects period of the last phase of the A5/A449 link road to be constructed or if later on the date on which any defects or damage arising from defects during the defects period of the last phase of the A5/A449 link road to be constructed have been made good to the satisfaction of the local highway authority acting reasonably, and when making such application the undertaker must—

- (a) submit to the local highway authority as built information of the relevant phase;
- (b) submit to the local highway authority a plan clearly identifying the extent of any land which is to be highway maintainable at public expense by the county highway authority which must be in accordance with the detailed design information but reflecting the as built outcome; and
- (c) pay to the local highway authority the commuted sum calculated in accordance with the versions of the ADEPT Commuted Sums Calculator and the ADEPT Bridge Sums Guidance in force at the date on which the commuted sum is calculated.

(3) If the provisions of paragraph 9(2) of this Part of this Schedule are complied with to the satisfaction of the local highway authority, the local highway authority must immediately issue a final certificate for the entirety of the A5/A449 link road, such certificate not to be unreasonably withheld or delayed.

## Security

9.—(1) Prior to the commencement of each phase the county highway works within that phase must be secured by a bond or such other form of bond or other security that may be agreed between the undertaker and the local highway authority to indemnify the local highway authority against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that phase under the provisions of this Part of this Schedule provided that the maximum liability of the bond or other form of security does not exceed the bond sum relating to that phase.

(2) In respect of all the county highway works, with the exception of the A5/A449 link road, each bond sum must be automatically reduced as follows—

- (a) on the issue of the provisional certificate for each phase the bond sum must automatically reduce by 80% of the bond sum relating to that phase save insofar as any claim or claims have been made against the bond or other form of security and/or liability on its part has arisen prior to that date; and
- (b) on the issue of the final certificate for each phase the bond/security provider must automatically be released from all its obligations in respect of the bond or other form of security relating to that phase save insofar as any claim or claims have been made against the Bond or other form of security or liability on its part has arisen prior to that date.

(3) In respect of the A5/A449 link road the bond sum for each phase of the A5/A449 link road must be reduced as follows—

- (a) in respect of any phase which includes any part of the new bridge to be provided over the railway and canal on the issue of the provisional certificate for that phase the bond sum must be reduced by such percentage as the undertaker and the local highway authority agree save insofar as any claim or claims have been made against the bond or other form of security and/or liability on its part has arisen prior to that date;
- (b) in respect of all phases of the A5/A449 link road to which paragraph (a) does not apply, on the issue of the provisional certificate for that phase the bond sum must be reduced by such percentage as the undertaker and the local highway authority agree subject to a minimum reduction to 50% of the bond sum save insofar as any claim or claims have been

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made against the bond or other form of security and/or liability on its part has arisen prior to that date; and

- (c) on the issue of the final certificate for the A5/A449 link road in accordance with paragraph 8 of this Part of this Schedule the bond/security provider must automatically be released from all its obligations in respect of all bonds or other form of security relating to the A5/A449 link road save insofar as any claim or claims have been made against the bond or other form of security or liability on its part has arisen prior to that date.

### **Insurance**

**10.** The undertaker must prior to commencement of the county highway works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the county highway works or any part thereof by the undertaker.

### **Indemnification**

**11.—(1)** The undertaker must in relation to the carrying out of the county highway works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify the local highway authority from and against all costs, expenses, damages, losses and liabilities arising from or in connection with or ancillary to any claim, demand, action or proceedings resulting from the design and carrying out of the county highway works prior to the issue of each defects certificate provided that the foregoing indemnity does not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of the local highway authority or its officers, servants, agents or contractors or any person or body for whom it is responsible.

(2) The undertaker must pay to the local highway authority each sum (if any) that is due to the local highway authority and certified as correct by the local highway authority arising from paragraph 12 of this Part of this Schedule within 28 days of receiving written notice from the local highway authority to do so and where payment is overdue interest will be payable calculated on a daily basis at a rate of 1% above the Base Rate of Lloyds Bank Plc.

(3) The undertaker must notify the local highway authority of the intended date of opening of each phase to public traffic not less than 14 days in advance of the intended date.

(4) The undertaker must notify the local highway authority of the actual date that each phase is open to public traffic on each occasion within 14 days of that occurrence.

### **Warranties**

**12.** The undertaker must procure warranties from the contractor and designer of each phase to the effect that all reasonable skill, care and due diligence will be exercised in designing and constructing that phase including the selection of materials, goods, equipment and plant, such warranties to be provided to the local highway authority before that phase commences.

### **Approvals**

**13.—(1)** Any approvals, certificates, consents or agreements required of, or sought from or with the local highway authority pursuant to the provisions of this Schedule must not be unreasonably withheld or delayed and must be given in writing save that any such approval, certificate, consent or agreement is deemed to have been given if it is neither given nor refused within 42 days of the specified day.

(2) In this paragraph “specified day” means—



- (a) the day on which particulars of the matter are submitted to the local highway authority under the provisions of this Part of this Schedule; or
- (b) the day on which the undertaker provides the local highway authority with any further particulars of the matter that have been reasonably requested by the local highway authority within 28 days of the date in paragraph (a),

whichever is the later.

### **Expert Determination**

14.—(1) Article 47 (arbitration) does not apply to this Part of this Schedule except in respect of sub-paragraph (7).

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) in respect of decisions on the level of the reductions of the bond sums pursuant to paragraph 9(3)(a) and (b) of this Part of this Schedule the need to ensure that the financial risk to the local highway authority is no greater than that which would ordinarily be accepted in relation to highway improvements required to facilitate private developments in which the local highway authority is carrying out its statutory duty as local highway authority, but having regard to any specific circumstances relating to the A5/A449 link road; and
- (f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 47.

**Status:** Point in time view as at 21/10/2020.  
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## Bond form

### 15. Form 2 as referred to in paragraph 2—

Form 2

Bond – Local Highway Authority

**BY THIS BOND** We [ ] [(Company Regn No )] whose registered office is situate at [ ] (**the undertaker**) and we [ ] [(Company Regn No )] whose registered office is situate at [ ] (**the Surety**) are jointly and severally bound to STAFFORDSHIRE COUNTY COUNCIL of 1 Staffordshire Place, Tipping Street, Stafford, ST16 2DH (**the Local Highway Authority**) this [ ] day of [ ] 20[ ] in the sum of [ ] pounds (£) [ ] Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves and their successors and assigns

**WHEREAS** under a Development Consent Order known as the West Midlands Interchange Order 2020 (**the DCO**) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein (**the county highway works**) in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to the Local Highway Authority such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 3 of Schedule 13 to the DCO on the undertaker's part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall in accordance with the provisions of Part 3 of Schedule 13 to the DCO on demand of the Local Highway Authority satisfy and discharge the damages sustained by the Local Highway Authority thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by the Local Highway Authority under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of the Local Highway Authority shall in any way release the Surety from any liability under this Bond.

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 9 of Part 3 of Schedule 13 of the DCO.

[Attestation]

## PART 4

### FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and WPD.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously;

“alternative rights” means all necessary legal easements, consents or permissions required by WPD to permit a diversion of apparatus or to authorise the construction of alternative apparatus;

“apparatus” means any conduit overhead electric lines cables ducts pipes or other apparatus or equipment belonging to or maintained by WPD for the purposes of electricity transmission and its distribution, and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

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

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus; and

“WPD” means Western Power Distribution Limited (West Midlands) Plc (Company Registration Number 03600574) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and WPD are regulated by the provisions of Part 3 of the 1991 Act.

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

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that WPD's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land or gain access to it must not be extinguished without the prior consent of WPD until alternative apparatus has been constructed and is in operation and access to it has been provided if necessary all to the reasonable satisfaction of WPD.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WPD written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order WPD reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (6), afford to WPD the necessary facilities and rights for the construction of alternative apparatus in other land owned or controlled by the undertaker and subsequently for the maintenance of that apparatus.

(3) If, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker must use reasonable endeavours to obtain alternative facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) Should the undertaker not be able to obtain the alternative rights required under sub-paragraph (3) then the undertaker and WPD must use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights.

(5) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker and the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (3) and an alternative engineering solution cannot be agreed in accordance with sub-paragraph (4), WPD must on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to a requirement on WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

(6) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 10 of this Part of this Schedule.

(7) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 10 of this Part of this Schedule, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(8) Regardless of anything in sub-paragraph (7), if the undertaker gives notice in writing to WPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WPD, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(9) Nothing in sub-paragraph (8) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

*Status: Point in time view as at 21/10/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)*

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 10 of this Part of this Schedule.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted.

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

7.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work, the undertaker must submit to WPD a plan, section and description of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3).

(2) Subject to sub-paragraph (3) the undertaker must not commence any works to which sub-paragraph (1) applies until WPD has given written approval of the submitted plan, and identified any reasonable requirements it has in relation to the carrying out of the works, such approval not to be unreasonably withheld or delayed.

(3) If by the expiry of 60 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted WPD has not advised the undertaker in writing of its approval or disapproval of the plans and any reasonable requirements for the alteration or otherwise for the protection of the apparatus, or for securing access to it, it is deemed to have approved the plans, sections or descriptions as submitted.

(4) The works referred to in sub-paragraph (1) must be executed in accordance with the plan, section and description approved under sub-paragraph (3) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by WPD, and WPD is entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker must comply with WPD's "Avoidance of Danger from Electricity Overhead Lines and Underground Cables" (2014), the Energy Network Association's "A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines" (undated), the Health and Safety Executive's GS6 "Avoiding Danger from Overhead Power Lines" and the Health and Safety Executive's "HSG47 Avoiding Danger from Underground Services" (3rd edition, 2014) as the same may be replaced from time to time.

(6) If in consequence of the works proposed by the undertaker, WPD reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement in accordance with sub-paragraph (2), the provisions of this paragraphs apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2) of this Part of this Schedule.

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable, submit a plan, section and description of those works to WPD as soon as reasonably practicable subsequently and comply with sub-paragraph (4) in so far as is reasonably practicable in the circumstances.

8. The undertaker must repay to WPD the reasonable expenses incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new connection arising as a result of the powers conferred upon the undertaker pursuant to this Order.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified work, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD, or there is any interruption in any service provided, or in the supply of any goods by, WPD, the undertaker is to—

- (a) bear and pay the cost reasonably incurred by WPD in making good such damage or restoring the supply; and
- (b) make reasonable compensation to WPD for any other expenses, loss, damages, penalty or costs incurred by WPD, by reason or in consequence of any such damage or interruption.

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

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

### **Expert determination**

10.—(1) Subject to sub-paragraph (7), article 47 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

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- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
  - (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
  - (d) give reasons for the decision.
- (6) The expert must consider where relevant—
- (a) the development outcome sought by the undertaker;
  - (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
  - (c) the nature of the power sought to be exercised by the undertaker;
  - (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
  - (e) any other important and relevant consideration.
- (7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 47.

## PART 5

### FOR THE PROTECTION OF USERS OF THE GAILEY PARK ROUNDABOUT

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the parties individually.

2. In this Part of this Schedule—

“Gailey Park roundabout” means the roundabout which is to be altered as part of Works No. 10b over which the parties have rights of access;

“Gravelly Way” means that part of Gravelly Way to be permanently stopped up as identified in Part 1 of Schedule 4 (streets to be permanently stopped up);

“new access road” means the new private road to connect the Gailey Park roundabout and the A5/A449 link road;

“parties” means the parties identified in paragraph 13 of this Part of this Schedule who have a right of way over the Gailey Park roundabout and such other persons who may acquire such interest, and “party” is to be construed accordingly;

“parties' premises” means the premises owned or occupied by the parties whose access is wholly or partly reliant on the Gailey Park roundabout; and

“vehicular access” means access for any type of vehicle which is able to access the parties' premises at the time this Order was made.

#### Maintaining access rights

3.—(1) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access at any time to any part of the parties' premises nor materially hinder or materially affect the standard, type and extent of access to the parties' premises without the consent of the party concerned, except in the case of emergency (and in the event of such emergency the undertaker must ensure that such prevention is minimised in scope and duration so far as is reasonably practicable).

(2) The undertaker must at all times maintain vehicular and pedestrian access for the parties and those wishing to visit the parties' premises from the public highway at any time through the Gailey Park roundabout either utilising the existing Gravelly Way or from the A5/A449 link road

or a temporary alternative suitable for such purpose (and in the event that a temporary alternative is to be provided, the undertaker must ensure that such temporary alternative is provided for the minimum duration reasonably practicable).

(3) The undertaker must not in the exercise of the powers conferred by this Order open the new access road unless and until the section of the A5/A449 link road between the new access road and the A449 has been practically completed and opened to the public.

### **Design details**

4.—(1) The undertaker must before commencing Works No. 10b provide a copy of the detailed plans and specifications of the new access road, the Gailey Park roundabout, any permanent and/or temporary accesses to the parties' premises, all existing and proposed service media affected by Works No. 10b and all proposed traffic management arrangements to the parties in draft and allow the parties 28 days to comment on them, and following receipt of all information reasonably required by the parties the undertaker must have regard to any reasonable comments made by the parties in respect of the detailed design of the new access road, the Gailey Park roundabout, any permanent and/or temporary accesses to the parties' premises, all proposed service media affected by Works No. 10b and all proposed traffic management arrangements.

(2) The undertaker must repay to the parties the reasonable and proper fees, costs, charges and expenses reasonably incurred by the parties in respect of their review of the details submitted by the undertaker pursuant to sub-paragraph (1) and any subsequent discussions regarding the specification of the new access road within 28 days of written demand.

5. The undertaker will procure warranties in favour of the parties from all main contractors, any sub-contractors with a design responsibility and any designers of the new access road, the Gailey Park roundabout, and accesses to the parties' premises and any associated temporary works to the effect that all reasonable skill, care and diligence will be exercised in designing and constructing those works to the standard as would reasonably be expected in respect of a similar roadway including the selection of materials, goods, equipment and plant, such warranties to be provided to the parties before commencing Works No. 10b.

6. The undertaker must provide as part of the works signage to direct that the new access road and Gailey Park roundabout are not to be used by construction or operational traffic of the authorised development.

7. The undertaker must not in the exercise of powers conferred by this Order extinguish any rights currently enjoyed by any party to install, connect into, repair, maintain, replace, move or remove or otherwise use service media, nor prevent the installation, connection, repair, maintenance, replacement, movement, removal, decommissioning or use of such services without the relevant party's consent (such consent not to be unreasonably withheld or delayed) or until the diversion of or provision of a reasonably suitable alternative to those services has been provided and rights have been granted to the parties to install, connect into, repair, maintain, replace or use such diverted or alternative service media and such diversion, alternative and rights must be no less beneficial to the parties than those currently enjoyed by those parties.

### **New access rights**

8.—(1) Following the completion of the construction of the new access road the undertaker must grant to each party rights of access for pedestrians and vehicles over the new access road and the Gailey Park roundabout in order to enable that party and all those authorised by it to have pedestrian and vehicular access to and egress from its premises at any time from the A5/A449 link road via the new access road and such rights of access and egress must be on terms which are no less beneficial to the party's premises and which impose no greater liability (but which will include maintenance

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of the length of the new access road) in respect of the parties' premises than those enjoyed by or imposed upon that party at the time this Order was made.

(2) The undertaker must, prior to the grant of the rights required under sub-paragraph (1), consult each party on the form of the rights that party requires having regard to that party's need to have access to and egress from any part of its premises and such rights must be on terms which are no less beneficial and which impose no greater liability (but which will include maintenance of the length of the new access road) in respect of the parties' premises than those currently enjoyed by or imposed upon that party over the Gailey Park roundabout via Gravelly Way from the public highway and the undertaker must have regard to the reasonable comments of the parties in relation to the rights granted.

(3) Following the completion of any temporary alternative access to the parties' premises the undertaker must grant to the parties concerned rights for pedestrian access and vehicular access over such temporary alternative access as necessary in order that the parties and all those authorised by them can have pedestrian and vehicular access to and egress from their premises at any time from the A5/A449 link road via such temporary alternative access and such rights of access must be no less beneficial to the parties' premises than those rights of access enjoyed by the parties at the time this Order was made.

(4) The undertaker must, prior to the grant of the rights required under sub-paragraph (3), consult each party on the form of the rights they require having regard to the need to access any part of their premises which must be no less beneficial to the parties' premises than those rights currently enjoyed by those parties over the Gailey Park roundabout via Gravelly Way to the public highway and the undertaker must have due regard to the reasonable comments of the parties in relation to the rights granted.

## **Maintenance**

**9.—**(1) Following the completion of the new access road and the Gailey Park roundabout in order that each party and all those authorised by it are able to have access to and egress from any part of the relevant party's premises, the undertaker must at its own expense remedy any material defects in those works as reasonably and properly required to be remedied as are identified by the parties or any of them within a period of 12 months from and including the date of such completion. Such remedial work must be carried out to the satisfaction of the party concerned acting reasonably and, provided that the defects in those works have been identified by the parties or any of them within the period of 12 months from the date of completion of the new access road and the Gailey Park roundabout, the undertaker's obligation to carry out the remedial works continues beyond that 12 month period until the works have been completed to the satisfaction of the party or parties concerned acting reasonably.

(2) The undertaker must maintain the new access road and the Gailey Park roundabout as necessary in order that each party and all those authorised by it can gain access to and egress from any part of the party's premises following completion of the works until alternative maintenance arrangements are agreed or until the transfer of the works to a management company pursuant to paragraph 10 of this Part of this Schedule.

**10.** The undertaker and the parties may enter into, and carry into effect, an agreement for the transfer to a management company of the land comprised in the new access road.

## **Indemnity**

**11.** If any material damage to the parties' premises or any of them is caused by the construction or maintenance (where the undertaker is responsible for such maintenance and not the management company) of the new access road, the Gailey Park roundabout, any accesses to the parties' premises, any associated service media works or any associated temporary works, the undertaker must make good such damage and must pay to the party concerned all reasonable and proper costs, charges,



damages, expenses and losses that it may incur by reason of such damage and must indemnify and keep indemnified the parties from and against all third party claims and demands arising out of or in connection with any of the matters referred to in this paragraph provided that the foregoing indemnity does not extend to any costs, charges, expenses, losses, liabilities or damages caused by or arising out of the actions, omissions or default of the party concerned or its officers, servants, agents or contractors or any person or body for whom it is responsible.

### **Expert determination**

**12.**—(1) Subject to sub-paragraph (7), article 47 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) any other important and relevant consideration; and
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 47.

**13.** The parties referred to in the definition of “parties” in paragraph 2 are—

- Air Liquide (Homecare) Limited
- Bericote Four Ashes Limited;
- British Telecommunications plc;
- Carver (Wolverhampton) Limited;

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

- Energetics Electricity Limited;
- Gravelly Way Management Ltd;
- Gestamp Tallent Limited;
- Haulotte UK Limited;
- Hoppe (U.K.) Limited;
- LU UK II Sarl;
- Mancot Limited;
- Alan Monckton;
- Camilla Monckton;
- Oliver Monckton;
- South Staffordshire Water plc;
- Sky UK Limited;
- Tritax Acquisition 28 Limited; and
- Tritax Big Box plc.

## PART 6

### FOR THE PROTECTION OF THE SI GROUP

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and SI Group.

2. In this Part of this Schedule and notwithstanding the definitions contained in article 2 (interpretation)—

“environmental permit” means the permit issued by the Environment Agency to SI Group under reference EPR/BS47071B (as varied) in respect of the SI facility and the SI land;

“Four Ashes Limited” means Four Ashes Limited whose company number is 09747871 and whose registered office is 4th floor, 7/10 Chandos Street, Cavendish Square, London, W1G 9DQ;

“permits” means the environmental permit and a licence to abstract groundwater under reference number MD/028/0003/002 which inter alia govern the abstraction of contaminated groundwater and discharge to a wastewater treatment plant at the SI facility;

“SI facility” means the land edged blue for indicative purposes only on the SI facility plan;

“SI facility plan” means the plan referred to as such in Schedule 15 (certification documents) and certified as the SI facility plan by the Secretary of State for the purposes of this Order;

“SI land” means the land within the Order limits which is owned by the SI Group for so long as it is owned by it; and

“written agreement of SI” means—

- (a) the agreement dated 3 August 2018 between the SI Group and Four Ashes Limited; or
- (b) such other written agreement made between the SI Group and Four Ashes Limited from time to time.

3. Subject to paragraph 7<sup>F17</sup>... of this Part of this Schedule the undertaker must not exercise any powers in accordance with this Order or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of the SI Group's interests in the SI land or SI facility, or those interests

which benefit those interests, including all rights, wayleaves and easements enjoyed by the SI Group in relation to the SI land and/or SI facility pursuant to—

- (a) article 13 (accesses);
- (b) article 21 (discharge of water);
- (c) article 22 (authority to survey and investigate the land);
- (d) article 24 (compulsory acquisition of land);
- (e) article 25 (compulsory acquisition of rights);
- (f) article [<sup>F18</sup>26] (private rights);
- (g) article [<sup>F19</sup>27] (power to override easements and other rights);
- (h) article 33 (rights under and over streets);
- (i) article 34 (temporary use of land for carrying out the authorised development);
- (j) article 35 (temporary use of land for maintaining the authorised development); and/or
- (k) article 41 (felling or lopping trees and removal of hedgerows),

unless the exercise of such powers is in accordance with the written agreement of SI.

#### Textual Amendments

- F17** Word in Sch. 13 Pt. 6 para. 3 omitted (21.10.2020) by virtue of [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, **2(13)(a)**
- F18** Word in Sch. 13 Pt. 6 para. 3(f) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, **2(13)(b)**
- F19** Word in Sch. 13 Pt. 6 para. 3(g) substituted (21.10.2020) by [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, **2(13)(c)**

4. The undertaker must not take any steps in accordance with this Order or otherwise that give rise to SI Group being in breach of any permits.

5. The undertaker must not carry out any of the authorised development on any part of the SI land where that land remains encompassed within the site boundary regulated by and referred to in the environmental permit save as in accordance with the written agreement of SI.

6. The undertaker must not, save as in accordance with the written agreement of SI., interfere with or obstruct the free, uninterrupted and safe use of any vehicular access to the SI facility.

7. A power referred to in paragraphs 3, 5 and 6 of this Part of this Schedule may be exercised notwithstanding those paragraphs where the written agreement with SI to which they refer provides that the power is permitted to be exercised.

## PART 7

### FOR THE PROTECTION OF THE CANAL & RIVER TRUST

1. The provisions of this Part of this Schedule are to have effect unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

2. In this Part of this Schedule—

“canal” means that part of the Staffordshire and Worcestershire Canal located within the Order limits;

**Status:** Point in time view as at 21/10/2020.

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“construction” includes execution, placing, alteration and reconstruction, and “construct” and “constructed” are to be construed accordingly;

“Trust” means the Canal & River Trust acting as a trustee of the Waterways Infrastructure Trust or any successor body performing the same functions and which holds any waterways within the order limits;

“code of practice” means the Code of Practice for Works Affecting the Trust (April 2017) as amended from time to time;

“detriment” means any damage to the waterway or any other property of the Trust caused by the presence of the authorised works and includes—

- (a) any effect on the stability of the waterway or the safe operation and navigation of any waterway;
- (b) any obstruction of, or interference with, or hindrance or damage to, navigation or to any use of the waterway (including towing paths);
- (c) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (d) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (e) the pollution of the waterway;
- (f) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (g) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Trust network); and
- (h) any interference with the exercise by any person of rights over the Trust's network;

“the engineer” means an engineer appointed by the Trust for the purpose in question;

“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timing and duration of any proposed use and/or occupation of the waterway;

“protective works” means works carried out pursuant to the provisions of paragraph 4(4) of this Part of this Schedule

“specified work” means so much of the authorised development as is situated upon, across, under, over or within 15 metres of the waterway; and

“waterway” means the canal, Calf Heath Reservoir and two feeder channels and any other property of the Trust (including fibre optic cabling within the towpath) and includes any works, services, apparatus, equipment, lands (including subsoil) or premises belonging to or under the control of the Trust and held or used by it in connection with its statutory functions.

### **Powers requiring consent of the Trust**

3.—(1) Where under this Part of this Schedule or anywhere else under this Order the Trust (or the engineer) is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the Trust must observe the provisions of its code of practice for works affecting waterways and where the code of practice is adhered to and its provisions observed, such consent must not be unreasonably withheld or delayed. Any consent may be issued subject to reasonable conditions including any condition which requires compliance with the code of practice or any applicable part and any condition which requires the payment of such charges/fees/costs as are typically charged by the Trust and in respect of article 21 (discharge of water), it is reasonable to impose the following conditions—

- (a) requiring the payment of such charges as are typically charged by the owner of the relevant waterway;
  - (b) specifying the maximum volume of water which may be discharged in any period; and
  - (c) authorising the Trust on giving reasonable notice (except in an emergency, when the Trust may require immediate suspension) to the undertaker to require the undertaker to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of the Trust.
- (2) In so far as any specified work or the acquisition of rights under and/or over or use of the waterway is or may be subject to the code of practice, the Trust must—
  - (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from that code or any other reasonable requirements of the Trust or the engineer; and
  - (b) use its reasonable endeavours to avoid any conflict arising between the application of that code and the proper implementation of the authorised development pursuant to this Order.
- (3) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any of the waterway, unless preventing such access is with the consent of the Trust.
- (4) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 <sup>M86</sup> (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act, or article 32 (statutory undertakers and operators of the electronic communications code network), in relation to any right of access of the Trust to the waterway, but such right of access may be diverted with the consent of the Trust .
- (5) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 21 or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Trust.
- (6) The undertaker must not exercise any power conferred by article 22 (authority to survey and investigate land) or section 11(3) (powers of entry) of the 1965 Act, in relation to the waterway unless such exercise is with the written consent of the Trust.
- (7) The undertaker must not exercise any power conferred by article 24 (compulsory acquisition of land) or article 25 (compulsory acquisition of rights) in respect of the Trusts interests in the waterway.
- (8) The undertaker must not exercise any power conferred by article 34 (temporary use of land for carrying out the authorised development) or article 35 (temporary use of land for maintaining the authorised development) in respect of the waterway unless such exercise is with the consent of the Trust.
- (9) The undertaker must not exercise any power conferred by this Order to construct a bridge spanning the waterway without the consent of the Trust with the exception of the powers of acquisition of rights over those interests held by third parties required to facilitate the construction of a bridge over the canal.
- (10) The undertaker must not exercise any power conferred by this Order to construct a culvert under the waterway without the consent of the Trust.
- (11) The undertaker must not exercise the power conferred by article 4 (parameters of authorised development) in respect of any bridges over the waterway without the consent of the Trust.
- (12) The undertaker must not exercise any power conferred by article 41 (felling or lopping of trees and removal of hedgerows) in respect of tree, shrub or hedgerow within an area of the specified work unless such power is exercised with the consent of the Trust.

**Status:** Point in time view as at 21/10/2020.

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(13) The undertaker must not demolish the canal crossings (as identified on the parameter plans (Document 2.5)) without first agreeing with the Trust the timescales and methodology of the demolition and the demolition must thereafter be carried out in accordance with the agreed methodology and timescale.

(14) The undertaker must not exercise any power conferred by this Order to stop up any public rights of navigation on the canal other than with the consent of the Trust.

(15) Where the Trust is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

(16) Where the undertaker is required to obtain the Trust's consent in accordance with this Order, such consent must be obtained in writing.

(17) The undertaker must consult and have regard to representations made by the Trust in relation to any details submitted to the local planning authority for approval under any of the requirements relating to so much of the authorised development as is situated upon, across, under, over or within 150 metres of, or may in any way affect, the waterway; this includes requirements 3, 4(2)(b), (c), (e), (h) and (n), 4(4), 6, 12, 13, 16, 17, 18, 20, 26, 27 and 30.

(18) Article 21(9) does not apply in relation to the Trust and accordingly there can be no deemed approval in respect of the discharge of any water into the waterway.

#### Marginal Citations

**M86** Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the [Communications Act 2003](#) (c. 21).

#### Approval of plans

4.—(1) The undertaker must before commencing construction of any specified work or carrying out any works on the waterway whatsoever supply to the Trust proper and sufficient plans of that work, the form(s) and application fee which is ordinarily required by the Trust's engineers in accordance with the code of practice and such further particulars available to it as the Trust may within 28 days of the submission of the plans reasonably require for the reasonable approval (having regard to the undertaker's timetable for the construction of the authorised development) of the Trust, and the specified work must not be commenced until the plans of that work have been approved in writing by the engineer or settled by expert determination pursuant to paragraph 25 of this Part of this Schedule. The approval of the engineer may be subject to any reasonable requirement that the specified work is undertaken at a time specified by the engineer.

(2) If—

(a) at the expiry of the period of 35 days—

(i) from receipt by the Trust of the proper and sufficient plans of the work, the form(s) and application fee which is ordinarily required by the Trust's engineers in accordance with the code of practice as referred to in sub-paragraph (1); or

(ii) if any other particulars are reasonably required by the Trust under sub-paragraph (1), from receipt by the Trust of that further information for; and

(b) the Trust has not served—

(i) notice of refusal of those plans; and

(ii) the grounds for refusal of those plans,

the Trust is deemed to have approved the plans as submitted provided that all information specified in sub-paragraph (1) has been supplied to the Trust together with any ordinarily applicable application fee.

(3) If by the end of the period of 35 days beginning with the date on which written notice was received by the engineer under sub-paragraph (1), the Trust gives notice to the undertaker that the Trust desires itself to construct any part of a specified work which in the opinion of the engineer may or will cause any detriment in respect of the waterway or the safe operation of the waterway, then if the undertaker requires such part of such specified work to be constructed the Trust must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision of the undertaker; and the undertaker must reimburse the Trust in respect of all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

(4) When signifying its approval of the plans, the Trust may specify any protective works (whether temporary or permanent) which in its opinion should be carried out before commencement of the construction of a specified work to prevent any detriment and such protective works (which for the avoidance of doubt may include requirements to fence any proposed works in order to separate the same from the waterway either on a permanent or temporary basis) as may be reasonably necessary to prevent detriment must be constructed by the undertaker, as agreed between the parties or settled by expert determination in accordance with paragraph 25 of this Part of this Schedule and such protective works must be carried out at the expense of the undertaker with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that any protective works have been completed to the engineer's reasonable satisfaction.

(5) The undertaker must pay to the Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (4) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewals of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving must be set off against any sum payable by the undertaker to the Trust under this paragraph.

(6) In the event that the undertaker fails to complete the construction of, or part of, the specified works or protective works the Trust may, if reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, the Trust may construct any of the specified works or protective works, or part of such works (together with any adjoining works) in order to complete the construction of, or part of, the specified works and/or protective works and the undertaker must reimburse the Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

## **Vehicles**

**5.** The undertaker must not use any of the waterway for the passage or siting of vehicles, plant and machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the Trust whose consent must not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the Trust may from time to time specify—
  - (i) for the prevention of the detriment; or
  - (ii) in order to avoid or reduce any inconvenience to the Trust, its officers and agents and all other persons lawfully on such land or property, but nothing in this paragraph applies in relation to anything done in accordance with any approval given by the Trust under paragraph 4 of this Part of this Schedule provided that such approval

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is given with the knowledge of the use of any land or property of the Trust or the waterway for this purpose.

### Survey of waterway

6.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Trust and the undertaker, of a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the undertaker must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterways as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require with regard to such existing works of the undertaker and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works

(4) Copies of the survey must be provided to both the Trust and the undertaker at no cost to the Trust.

### Design of works

7.—(1) Without prejudice to its obligations under the provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by the Trust in relation to—

- (a) the design and appearance of the specified works (or any works authorised by this Order so far as such works may affect the waterway or the setting of the waterway), including the materials to be used for their construction; and
- (b) the environmental effects of those works,

and must have regard to such views as may be expressed by the Trust in response to such consultation pursuant in particular to the requirements imposed on the Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 <sup>M87</sup> and to the interest of the Trust in preserving and enhancing the environment of its waterways.

#### Marginal Citations

M87 1995 c. i.

### Construction of specified works

8.—(1) Any specified work and any protective works to be constructed must, when commenced, be constructed—



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- (a) with all reasonable dispatch (having regard to the undertaker's timetable for construction of the authorised development) in accordance with the plans approved or deemed to have been approved or settled under paragraph 4 of this Part of this Schedule and with any requirements made under paragraph 7 of this Part of this Schedule;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as possible to the waterway;
- (d) in such a manner to ensure that no materials are discharged or deposited into the waterway forming part of the Trust property otherwise than in accordance with article 21 (discharge of water);
- (e) in such a manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the waterway, except to the extent that temporary obstruction has otherwise been agreed by the Trust; and
- (f) in compliance with the code of practice if relevant.

(2) If any damage or detriment to the waterway is caused by the carrying out of, or in consequence of the construction of a specified work or protective work, the undertaker must make good such damage or detriment and must pay to the Trust all reasonable and proper expenses that the Trust may incur or may be put and reasonable and proper compensation for any loss which it may sustain by reason of such damage, detriment, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the Trust or its servants, contractors or agents or any liability on the Trust with respect of any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.

(4) Nothing in this Order authorises the undertaker to make or maintain any permanent work in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Trust is required by section 105(1)(b) and (2) (maintenance of waterways) of the Transport Act 1968<sup>M88</sup> to maintain the waterway.

(5) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Trust.

#### Marginal Citations

**M88** 1968 c. 73. Section 105 was amended by [S.I. 2012/1659](#).

#### Notice of works and access to works

9.—(1) The undertaker must give to the Trust 30 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Trust's network.

(2) The undertaker must—

- (a) at all times afford reasonable facilities to the Trust for access to a specified work during its construction; and
- (b) supply the Trust with all such information as it may reasonably require with regard to a specified work or the method of constructing it.

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*Changes to legislation: There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)*

(3) In relation to any proposed closure of the canal or towpath or proposed temporary stopping up of public rights of navigation in respect of the canal, the undertaker must comply with the notification requirements and the procedure set out in the code of practice.

### **Lighting**

**10.** The undertaker must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the Trust may reasonably require during the construction or failure of the specified or protective works.

### **Access to works**

**11.** The Trust, on being given reasonable notice, must use reasonable endeavours to afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Trust under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Trust's reasonable costs in relation to the supply of such information.

### **Prevention of pollution**

**12.** The undertaker must not in the course of constructing a specified work or protective works or otherwise in connection therewith (or in connection with any works authorised by this Order) do or permit anything which may result in the pollution of the waterway or the deposit of materials therein and must comply with any statutory requirements and take such steps as the Trust may reasonably require to avoid or make good any breach of its obligations under this paragraph.

### **Repayment of the Trust's fees**

**13.** The undertaker must repay to the Trust all reasonable and proper fees, costs, charges and expenses reasonably incurred by the Trust in accordance with the code of practice in respect of—

- (a) its approval of plans submitted by the undertaker;
- (b) the supervision by the Trust of the construction of a specified work or protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other person whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, the interference, obstruction, danger or accident arising from the construction or failure of the specified works and any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of the Trust's network.

### **Maintenance of works**

**14.** If at any time during or after the completion of a specified work or protective works, the Trust gives notice to the undertaker informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not to cause such detriment.

## Compensation and indemnity

**15.—(1)** The undertaker must pay to the Trust all reasonable and proper costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to and reasonably incurred by the Trust—

- (a) by reason of the existence, construction or maintenance of a specified work or protective works or the failure of such work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work,

and the undertaker must indemnify and keep indemnified the Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in this sub-paragraph. The fact that any act or thing may have been done by the Trust on behalf of the undertaker or in accordance with plans approved by the Trust or in accordance with any requirement of the Trust or under the Trust's supervisions or in accordance with any directions or awards following expert determination is not (if it was done without negligence on the part of the Trust or any person in its employ or of its contractors or agents) to relieve the undertaker from any liability under the provision of this sub-paragraph.

(2) The Trust must give the undertaker reasonable notice of any such claim or demand and save as such conduct would be contrary to law no settlement or compromise of such a claim or demand must be made without the prior written consent of the undertaker, such consent not to be unreasonably withheld or delayed.

**16.** The Trust must, on receipt of a written request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim or to be made pursuant to this Part of this Schedule.

**17.** In the assessment of any sums payable to the Trust under this Part of this Schedule, there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the Trust if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**18.** The undertaker and the Trust may enter into, and carry into effect, agreement for the transfer to the undertaker of—

- (a) any waterway shown on the works and/or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such waterway; and
- (c) and rights and obligations (whether or not statutory) of the Trust relating to the waterway or any lands, works or other property referred to in this paragraph,

and the Trust may seek to require the undertaker to pay a commercial rate/cost/fee to the Trust.

**19.** The undertaker must repay to the Trust in accordance with the Trust's code of practice all reasonable fees, costs, charges and expenses reasonably incurred by the Trust—

- (a) in constructing any part of a specified work on behalf of the undertaker or in constructing any protective works including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the Trust of plans submitted by the undertaker and the supervision by it of the construction of a specified work or any protective works;

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

- (c) in respect of the employment or procurement of the services of any persons whom it must be reasonably necessary to appoint for inspecting, signalling, watching and lighting the waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or incident arising from the construction or failure of a specified work or any protective works;
- (d) in respect of any additional temporary lighting of the waterway in the vicinity of the specified works or any protective works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or protective work;
- (e) in bringing the specified works or any protective works to the notice of users of the Trust's network; and
- (f) in constructing and/or carrying out any measures relating to the authorised development which are reasonably required by the Trust to ensure the safe navigation of the waterway save that nothing shall require the Trust to construct and/or carry out such measures.

**20.**—(1) If any permanent or temporary alterations or additions to the waterway are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of the waterway, the continued safe operation of the waterway or the prevention of a detriment such alterations and additions may be carried out by the Trust upon the giving of reasonable notice to the undertaker and the undertaker must pay to the Trust the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Trust in maintaining, working and, when necessary, renewing any such alternations or additions.

(2) If during the construction of a specified work by the undertaker, the Trust gives notice to the undertaker that the Trust desires itself to construct that part of the specified work which in the opinion of the Trust is endangering the stability of the waterway or the safe operation of any waterway then, if the undertaker decided that part of the specified work is to be constructed, the Trust shall assume construction of that part of the specified work under paragraph 4(3) of this Part of this Schedule and the undertaker must pay to the Trust all reasonable expenses to which the Trust may be put and compensation for any loss which it may suffer by reason of the execution by the Trust of that specified work.

(3) The Trust must, in respect of the capitalised sums referred to in this paragraph and the other provisions of this Part of this Schedule, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably request in writing within 14 days of Trust notifying the undertaker of the amount of the capitalised sums.

(4) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Trust under this paragraph.

### **Costs of alterations**

**21.** Any additional expenses which the Trust may reasonably incur in altering, reconstructing or maintaining the waterway under any powers existing at the date when this Order was made by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be paid by the undertaker to the Trust.

**22.**—(1) The fact that any act or thing may have been done by the Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an

arbitrator does not (if it was done without negligence on the part of the Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

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

### **Fencing**

**23.** Where so reasonably required by the engineer the undertaker must to the reasonable satisfaction of the engineer fence off a specified work or protective works or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or protective works from the waterway, whether on a temporary or permanent basis or both.

### **Capitalised sums**

**24.** Any capitalised sum which is required to be paid under this Part of this Schedule must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

### **Expert determination**

**25.—(1)** Article 47 (arbitration) does not apply to this Part of this Schedule except in respect of sub-paragraph (7).

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the undertaker and the Trust or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the status of the Trust as a registered charity;
- (d) the requirement for the Trust to comply with its statutory duties and responsibilities;

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- (e) the nature of the power sought to be exercised by the undertaker;
- (f) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (g) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 47.

## PART 8

### FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

#### Application

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Cadent.

#### Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent to enable it to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protection, cables or other apparatus belonging to or maintained by Cadent for the purpose of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to the apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

“Cadent” means Cadent Gas Limited (Company Number 10080864) whose registered office is situated at Ashbrook Court, Prologis Park, Central Boulevard, Coventry, CV7 8EP and any successor in title or assignee including any successor to their license as a gas transporter under Part 1 of the Gas Act 1986<sup>M89</sup>;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities

and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for Cadent's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including construct, use, repair, alter, inspect, renew or remove the apparatus;

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

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) of this Part of this Schedule or otherwise; or
- (b) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 Cadent policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”.

#### **Marginal Citations**

**M89** 1986 c. 44.

### **On Street Apparatus**

3.—(1) Except for paragraphs 4 (apparatus of Cadent in stopped up streets), 6 (removal of apparatus) and 7 (facilities and rights for alternative apparatus) (in so far as sub-paragraph (2) applies), 8 (retained apparatus: protection), 9 (expenses) and 10 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, and subject to sub-paragraph (2), the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Notwithstanding sub-paragraph (1), paragraphs 6 and 7 of this Part of this Schedule apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding article 33(5) (rights under or over streets) and article 35(7) (temporary use of land for maintaining the authorised development) or any other powers in the Order generally, section 85 (sharing cost of necessary measures) of the 1991 Act, and the regulations made thereunder, do not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

### **Apparatus of Cadent in stopped up streets**

4.—(1) Without prejudice to the generality of any other protection afforded to Cadent elsewhere in the Order, where any street is stopped up under article 10 (permanent stopping up of streets),

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if Cadent has any apparatus in the street or accessed via that street Cadent will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent, or will procure the granting to Cadent, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or Cadent to require removal of the apparatus under paragraph 6 of this Part of this Schedule.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 11 (temporary stopping up of streets), Cadent will be at liberty at all times to take all necessary access across any such stopped up street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

(3) The protective provisions in this Part of this Schedule apply and take precedence over article 36(2) to (7) (apparatus and rights of statutory undertakers in stopped up streets) of the Order which do not apply to Cadent.

### **Acquisition of land**

5.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker may not acquire any land interest or apparatus or acquire, extinguish, interfere with or otherwise override any easement and/or other interest or right of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 8, or any other paragraph, of this Part of this Schedule, is not taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

6.—(1) If, in the exercise of the agreement reached in accordance with paragraph 5 of this Part of this Schedule or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Cadent in accordance with sub-paragraphs (2) to (5).



(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Cadent to its satisfaction (taking into account paragraph 8(1) of this Part of this Schedule) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, with the undertaker's assistance if required by Cadent, save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

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

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 14 of this Part of this Schedule and the arbitrator is to make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection**

8.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

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(2) The plan to be submitted to the undertaker under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraph (1) applies until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraph (1) applies, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Cadent for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the Cadent must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If Cadent in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2) of this Part of this Schedule.

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22” and HSE's “HS(~G)47 Avoiding Danger from underground services”.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 9 of this Part of this Schedule.

### **Expenses**

**9.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by Cadent as a consequence of Cadent—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 6(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not

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determined by arbitration in accordance with article 47 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, 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 Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and

- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 (benefit of order granting development consent ) of the 2008 Act subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 10.

(4) Cadent must give the undertaker reasonable notice of any such third-party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

**11.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to Cadent on the date on which this Order is made.

### **Co-operation**

**12.—(1)** Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 6(2) of this part of this Schedule Cadent makes requirements for the protection or alteration of apparatus under paragraph 8 of this Part of this Schedule, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

**13.** If in consequence of the agreement reached in accordance with paragraph 5(1) of this Part of this Schedule or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**14.** Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 47 (arbitration).

### **Notices**

**15.** The plan and scheme submitted to the undertaker by Cadent pursuant to paragraph 8(1) of this Part of this Schedule must be sent to Cadent Gas Limited Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) or such other address as the undertaker may from time to time appoint instead for that purpose and notify to the undertaker.

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

## PART 9

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the operator.

2. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003 <sup>M90</sup>;

“electronic communications apparatus” has the same meaning as in the electronic communications code <sup>M91</sup>;

“the electronic communications code” has the same meaning as in section 106(1) <sup>M92</sup> (application of the electronic communications code) of the 2003 Act;

“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 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

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

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

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

#### Marginal Citations

**M90** 2003 c. 21.

**M91** See paragraph 5 of Schedule 3A (the electronic communications code) to the [Communications Act 2003](#) (c. 21). Schedule 3A was inserted by Schedule 1 to the [Digital Economy Act 2017](#) (c. 30).

**M92** [Section 106](#) was amended by section 4(3) to (9) of the [Digital Economy Act 2017](#) (c. 30).

3. The exercise of the powers conferred by article 32 (statutory undertakers and operators of the electronic communications code network) is subject to Part 10 of the electronic communications code.

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

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

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

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

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

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 47 (arbitration).

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

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

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

## PART 10

### FOR THE PROTECTION OF WATER AND SEWERAGE UNDERTAKERS

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (b) in the case of a sewerage undertaker—
  - (i) any drain or works vested in that undertaker under the Water Industry Act 1991<sup>M93</sup>, and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)<sup>M94</sup> (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104<sup>M95</sup> (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

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*Changes to legislation: There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)*

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

“utility undertaker” means—

- (a) a water undertaker within the meaning of the Water Industry Act 1991; and
- (b) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

#### **Marginal Citations**

**M93** 1991 c. 56.

**M94** Section 102(4) was amended by sections 56 and 96(1)(c) to (e) of, and paragraphs 2 and 90 of Schedule 7 to, the [Water Act 2014 \(c. 21\)](#).

**M95** Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 (c. 37), section 42(3) of the [Flood and Water Management Act 2010 \(c. 29\)](#) and sections 11 and 56 of, and paragraphs 2 and 91 of Schedule 7 to, the [Water Act 2014 \(c. 21\)](#).

#### **On street apparatus**

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

#### **Apparatus in stopped up streets**

4.—(1) Where any street is stopped up under article 10 (permanent stopping up of streets), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 6 of this Part of this Schedule or the power of the undertaker to carry out works under paragraph 8 of this Part of this Schedule.

(2) Regardless of the temporary stopping up or diversion of any street under the powers conferred by article 11 (temporary stopping up of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

#### **Acquisition of land**

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

#### **Removal of apparatus**

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed, diverted or otherwise altered under this Part of this Schedule, and/or any right of a utility undertaker to maintain apparatus in that land must not be extinguished, or made incapable of being exercised unless—



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- (a) it is in the reasonable opinion of the undertaker necessary for the purpose of carrying out the authorised development;
- (b) any alternative, diverted or relocated apparatus required by the utility undertaker (acting reasonably) has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6);
- (c) any rights required by the utility undertaker (acting reasonably) including to install, access, retain, replace, divert, relocate and maintain any apparatus or alternative apparatus have been granted to the reasonable satisfaction of the utility undertaker; and
- (d) any of the apparatus or alternative apparatus referred to in paragraph (b) or rights required and referred to in paragraph (c) do not in the reasonable opinion of the utility undertaker cause a material increase in the time, resources of and costs to the utility undertaker in using, operating or maintaining its apparatus unless agreed otherwise by the utility undertaker.

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), and in accordance with a timetable to be agreed with the undertaker (both parties acting reasonably) such timetable to have due and proper regard to the utility undertaker's statutory obligations with regard to its apparatus and undertaking including its obligation to maintain the supply of clean water at all times, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and, subject to the provisions of sub-paragraph (2) of this paragraph, subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker

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without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is lain in a trench) within 300 millimetres of apparatus which is not being removed, diverted or altered without the consent of the utility undertaker (such consent not to be unreasonably withheld or delayed).

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

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

### **Retained apparatus**

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal, diversion or alteration of which has not been required by the undertaker under paragraph 6(2) of this Part of this Schedule, the undertaker must submit to the utility undertaker in question for approval (such approval not to be unreasonably withheld or delayed and in any event within 17 working days) a plan, section and description of the works to be executed including (where appropriate) the proposed details of and location of alternative apparatus.

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

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 17 working days beginning with the date on which a plan, section and/or description of the works under sub-paragraph (1) is submitted to it.

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

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan section and description for approval of the utility undertaker (such approval not to be unreasonably withheld or delayed and in any event within 17 working days) instead of the plan, section or description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and it must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances and it must not under any circumstances interfere with the apparatus of the utility undertaker or do anything that would interfere with or prevent the use of that apparatus without the express permission of the utility undertaker.

(7) The utility undertaker must acknowledge any notice received from the undertaker pursuant to sub-paragraph (6) without delay and within not more than 24 hours of receipt of such notice and it must agree with the undertaker as soon as reasonably possible exercising all reasonable endeavours a scheme of works necessary to address the emergency and which works may at the utility undertaker's absolute discretion be carried out by the undertaker, and the utility undertaker must without delay cooperate with the undertaker to address the emergency in so far as it may interfere with the apparatus of the utility undertaker or do anything that would interfere with or prevent the use of that apparatus.

### **Expenses and costs**

**9.—**(1) Subject to the sub-paragraph (2), the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the approval of plans, specification, descriptions, inspection, installation, removal, diversion, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 8(2) of this Part of this Schedule and the reasonable costs of securing any rights which the utility undertaker requires (acting reasonably).

(2) There must be deducted from any sum payable under sub-paragraph (1) a sum, equivalent to 7.5% of the costs of any of those matters referred to in sub-paragraph (1) occasioned by the creation of new traffic islands at—

- (a) the A5 between Gailey Bridge (on the Staffordshire and Worcestershire Canal) and Calf Heath Reservoir; and
- (b) Junction of the A449 Stafford Road with Crateford Lane and Gravelly Lane.

**10.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the exercise of any rights or powers under this Order, or construction of any such works referred to in paragraphs 6 or 8(2) of this Part of this Schedule, or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus (whether unaltered, diverted or relocated) or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, or there is an increase in the cost to the utility undertaker of carrying out its statutory obligations or providing services or goods or operating or maintaining its apparatus or any omission by the undertaker or its agents causes any such matter the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) indemnify that utility undertaker for any other expenses, loss, proceedings, damages, claims, penalty or costs incurred by the utility undertaker, by reason or in consequence of any such damage or interruption or increase in costs or the utility undertaker becoming liable to any third party as aforesaid other than arising from any default of the utility undertaker.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan, specification or description approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not,

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subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

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

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

### Cooperation

**11.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal, diversion or alteration of apparatus under paragraph 6(2) of this Part of this Schedule or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 8 of this Part of this Schedule, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

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

## SCHEDULE 14

Article 44

### MISCELLANEOUS CONTROLS

#### *Public general legislation*

### Introduction

**1.** This Schedule applies, modifies and excludes statutory provisions which relate to matters for which provision may be made in this Order.

### Highways Act 1980

**2.—(1)** Section 141 (restriction on planting trees etc. in or near carriageway) of the 1980 Act <sup>M96</sup> does not apply to any tree or shrub planted in the course of the authorised development before completion of construction.

(2) Section 167 (powers relating to retaining walls near streets) of the 1980 Act <sup>M97</sup> does not apply in relation to—

- (a) the erection of a wall in the course of the authorised development before completion of construction; or
- (b) a wall on land on which works are being carried out, or are to be carried out, in pursuance of the authorised development before completion of construction.

### Marginal Citations

**M96** 1980 c. 66. Section 141 was amended by sections 37 and 46 of the [Criminal Justice Act 1982 \(c. 48\)](#).

**M97** 1980 c. 66. Section 167 was amended by sections 37, 38 and 46 of the [Criminal Justice Act 1982 \(c. 48\)](#).

### New Roads and Street Works Act 1991

3.—(1) The powers conferred by section 56(1) and (1A) (powers to give directions as to the timing of proposed and subsisting street works) of the 1991 Act <sup>M98</sup> do not apply in relation to the authorised development.

(2) Section 56A (power to give directions as to placing of apparatus) of the 1991 Act <sup>M99</sup> does not apply in relation to the placing of apparatus in the course of the authorised development.

(3) No restriction under section 58(1) (power to impose restriction on execution of street works in the twelve months following completion of substantial road works) of the 1991 Act <sup>M100</sup> has effect in relation to the authorised development.

(4) Section 61(1) (under which the consent of the street authority is required for the placing of apparatus in a protected street) of the 1991 Act does not apply to the placing of apparatus in the course of the authorised development.

(5) Section 62(2) (power following designation of a protected street to require removal or repositioning of apparatus already placed in the street) of the 1991 Act does not apply in relation to apparatus placed in the course of the authorised development.

(6) Section 62(4) (power when designation as a protected street commences or ceases to give directions with respect to works in progress) of the 1991 Act does not apply in relation to the authorised development.

(7) Section 63(1) (under which Schedule 4 to that Act has effect for requiring the settlement of a plan and section of street works to be executed in a street designated by the street authority as having special engineering difficulties) of the 1991 Act does not apply in relation to the authorised development.

(8) The powers conferred by section 73A(1) and 78A(1) (requirements for undertaker to re-surface street) of the 1991 Act <sup>M101</sup> are not be exercised in relation to the authorised development.

(9) Sections 74 and 74A (charge for occupation of the highway and charge determined by reference to duration of works) of the 1991 Act <sup>M102</sup> do not apply in relation to the authorised development.

(10) Schedule 3A (restriction on works following substantial street works) to the 1991 Act does not apply where a notice under section 54 (advance notice of certain works) or 55 (notice of starting date of works) of that Act <sup>M103</sup> is given in respect of the authorised development.

(11) No notice under paragraph 2(1)(d) of Schedule 3A to the 1991 Act has effect to require the notification of works proposed to be carried out in the course of the authorised development.

(12) No directions under paragraph 3 of Schedule 3A to the 1991 Act are to be issued to the undertaker.

(13) Paragraph 3(4) of Schedule 3A to the 1991 Act does not apply in relation to the execution of works in the course of the authorised development.

(14) Paragraph 5(1) of Schedule 3A to the 1991 Act does not apply in relation to the execution of works in the course of the authorised development.

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**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

#### Marginal Citations

- M98** 1991 c. 22. Section 56(1) and (1A) were amended by section 43 of the [Traffic Management Act 2004](#) (c. 18).
- M99** 1991 c. 22. Section 56A was inserted by section 44 of the [Traffic Management Act 2004](#) (c. 18).
- M100** 1991 c. 22. Section 58(1) was amended by section 51(1), (2) of the [Traffic Management Act 2004](#) (c. 18).
- M101** 1991 c. 22. Section 73A was inserted by section 55(1) of the [Traffic Management Act 2004](#) (c. 18). Section 78A was inserted by section 57(1) of the [Traffic Management Act 2004](#) (c. 18).
- M102** 1991 c. 22. Section 74 was amended by sections 256 and 274 of, and Part 5(2) of Schedule 31 to, the [Transport Act 2000](#) (c. 38), [section 40\(4\)](#) and section 52(5) of the [Traffic Management Act 2004](#) (c. 18), and section 1(6) of, and paragraphs 113 and 119 of Part 2 of Schedule 1 to, the [Infrastructure Act 2015](#) (c. 7). Section 74A was inserted by section 255(1) of the [Transport Act 2000](#) (c. 38) and was amended by section 1(6) of, and paragraphs 113 and 120 of Part 2 of Schedule 1 to, the [Infrastructure Act 2015](#) (c. 7) and section 40(4) of the [Traffic Management Act 2004](#) (c. 18).
- M103** 1991 c. 22. Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the [Traffic Management Act 2004](#) (c. 18). Section 54 was amended by section 40(1) and (2) and section 49(1) of, and Schedule 1 to, the [Traffic Management Act 2004](#) (c. 18). Section 55 was amended by section 40(1) and (2), section 49(2) and section 51(1) and (9) of, and Schedule 1 to, the [Traffic Management Act 2004](#) (c. 18).

#### Local Government (Miscellaneous Provisions) Act 1976

4. Section 42 (certain future local Acts, etc., to be subject to the planning enactments, etc., except as otherwise provided) of the Local Government (Miscellaneous Provisions) Act 1976 <sup>M104</sup> does not apply to the extent that it would make provisions of this Order authorising the authorised development subject to other provisions.

#### Marginal Citations

- M104** 1976 c. 57. Section 42 was amended by section 6(2) of, and the Schedule to, the [Ports \(Finance\) Act 1985](#) (c. 30), and section 15 of the [Food and Environment Protection Act 1985](#) (c. 48).

#### Town and Country Planning Act 1990

5. No order, notice or regulation under the 1990 Act in relation to the preservation of trees, has effect in relation to the authorised development.

#### Environment Act 1995

6. No order, notice or regulation under the Environment Act 1995 <sup>M105</sup> in relation to the preservation of hedgerows, has effect in relation to the authorised development.

#### Marginal Citations

- M105** 1995 c. 25.

## SCHEDULE 15

Article 45

## CERTIFICATION DOCUMENTS

1. Documents for certification that they are true copies of the documents referred to in this Order—

<i>(1) Document/Plan</i>	<i>(2) Document Number</i>	<i>(3) Document date/Plan number with revision number</i>
Access and rights of way plans		
Key Plan	2.3	WSP-70001979-SK-060 Rev I
Sheet 1	2.3A	WSP-70001979-SK-060 Rev H
Sheet 2	2.3B	WSP-70001979-SK-060 Rev G
Sheet 3	2.3C	WSP-70001979-SK-060 Rev F
Sheet 4	2.3D	WSP-70001979-SK-060 Rev F
Sheet 5	2.3E	WSP-70001979-SK-060 Rev F
Sheet 6	2.3F	WSP-70001979-SK-060 Rev F
Sheet 7	2.3G	WSP-70001979-SK-060 Rev B
The book of reference	4.3B	21 August 2019
The bridge plans		
Proposed road bridges plan and long section	2.18A	1516-04250WDK-SI-C-301-010 Rev P8
Proposed bridge B1 section and elevation	2.18B	1516-04250WDK-SI-C-301-006 Rev P11
Proposed road bridge B2 and B3 section and elevation	2.18C	1516-04250WDK-SI-C-301-006 Rev P11
Proposed road bridge B4 section and elevation	2.18D	1516-04250WDK-SI-C-301-008 Rev P14
The design and access statement	7.5	3 August 2018
The environmental statement	6.2	3 August 2018 (subject to the substitutions set out below): (i) Figures 10.001, 10.002, 10.003 and 10.004 – 12 September 2018; (ii) Annex 10.1.1 – 12 September 2018; (iii) Addendum to Chapter 13 (Noise and Vibration) – 5 April 2019 (iv) Appendix I to Transport Assessment (Appendix 15.1) (Site Wide HGV Management Plan) – 7 May 2019 (v) Appendix H to Transport Assessment (Appendix 15.1) (Site Wide Travel plan) – 5 July 2019 (vi) Appendix 2.3 (Outline Demolition and Construction Management Plan) – 5 July 2019

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(vii) Appendix 10.4 (Framework Ecological Mitigation and Management Plan) – 5 July 2019  
 (viii) Updated Chapter 7 (Air Quality) and Appendices 7.2, 7.3, 7.4, 7.6 and 7.7 – 7 August 2019

The future highway maintenance plans

Key Plan	2.10	WSP-70001979-SK-091 Rev F
Sheet 1	2.10A	WSP-70001979-SK-091 Rev F
Sheet 2	2.10B	WSP-70001979-SK-091 Rev C
Sheet 3	2.10C	WSP-70001979-SK-091 Rev C

The highway classification plans

Key Plan	2.13	WSP-70001979-SK-068 Rev I
Sheet 1	2.13A	WSP-70001979-SK-068 Rev H
Sheet 2	2.13B	WSP-70001979-SK-068 Rev E
Sheet 3	2.13C	WSP-70001979-SK-068 Rev E

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The highway general arrangement plans

Key Plan/Highway Masterplan	2.9	WSP-70001979-GA-100 Rev L
General Arrangement Plan 101	2.9A	WSP-70001979-GA-101 Rev E
General Arrangement Plan 102	2.9B	WSP-70001979-GA-102 Rev E
General Arrangement Plan 103	2.9C	WSP-70001979-GA-103 Rev I
General Arrangement Plan 104	2.9D	WSP-70001979-GA-104 Rev L
General Arrangement Plan 105	2.9E	WSP-70001979-GA-105 Rev E
General Arrangement Plan 106	2.9F	WSP-70001979-GA-106 Rev G
General Arrangement Plan 107	2.9G	WSP-70001979-GA-107 Rev H
General Arrangement Plan 108	2.9H	WSP-70001979-GA-108 Rev F
General Arrangement Plan 109	2.9I	WSP-70001979-GA-109 Rev G
General Arrangement Plan 110	2.9J	WSP-70001979-GA-110 Rev H
General Arrangement Plan 111	2.9K	WSP-70001979-GA-111 Rev G

The land plans

Key Plan	2.1	Key Plan v1
Sheet 1	2.1A	Sheet 1 of 12 v0
Sheet 2	2.1B	Sheet 2 of 12 v0
Sheet 3	2.1C	Sheet 3 of 12 v0
Sheet 4	2.1D	Sheet 4 of 12 v1



Sheet 5	2.1E	Sheet 5 of 12 v0
Sheet 6	2.1F	Sheet 6 of 12 v0
Sheet 7	2.1G	Sheet 7 of 12 v0
Sheet 8	2.1H	Sheet 8 of 12 v0
Sheet 9	2.1I	Sheet 9 of 12 v0
Sheet 10	2.1J	Sheet 10 of 12 v0
Sheet 11	2.1K	Sheet 11 of 12 v0
Sheet 12	2.1L	Sheet 12 of 12 v0
Order limits plan	2.4	4049-10 Rev 05
The parameters plans		
Development Zone Parameters Plan		
Key Plan	2.5	4049-1030 Rev 07
Sheet 1	2.5A	4049-1035 Rev 07
Sheet 2	2.5B	4049-1036 Rev 07
Sheet 3	2.5C	4049-1037 Rev 08
Sheet 4	2.5D	4049-1038 Rev 06
Floor Levels and Building Heights Parameters Plan		
Key Plan	2.6	4049-1031 Rev 07
Sheet 1	2.6A	4049-1040 Rev 06
Sheet 2	2.6B	4049-1041 Rev 06
Sheet 3	2.6C	4049-1042 Rev 07
Sheet 4	2.6D	4049-1043 Rev 06
Green Infrastructure Parameters Plan		
Key Plan	2.7	4049-1033 Rev 10
Sheet 1	2.7A	4049-1050 Rev 09
Sheet 2	2.7B	4049-1051 Rev 09
Sheet 3	2.7C	4049-1052 Rev 10
Sheet 4	2.7D	4049-1053 Rev 08
The illustrative arrangement of railway alignment	2.14	TRS-DRG-FA-001003 Rev 3
The rail terminal – illustrative expanded rail terminal layout plan	2.15B	TRS-DRG-FA-001010 Rev 02
The rail section plans		
Cross sections rail alignment Sheet 1	2.16A	TRS-DRG-FA-001005 Rev 01
Cross sections rail alignment Sheet 2	2.16B	TRS-DRG-FA-001006 Rev 02

**Status:** Point in time view as at 21/10/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020. (See end of Document for details)

Cross sections rail alignment Sheet 3	2.16C	TRS-DRG-FA-001007 Rev 01
Long sections rail alignment Sheet 1	2.16D	TRS-DRG-FA-001004 Rev 01
Long sections rail alignment Sheet 2	2.16E	TRS-DRG-FA-001008 Rev 01
The speed limit plans		
Key Plan	2.12	WSP-70001979-SK-062 Rev I
Sheet 1	2.12A	WSP-70001979-SK-062 Rev K
Sheet 2	2.12B	WSP-70001979-SK-062 Rev F
Sheet 3	2.12C	WSP-70001979-SK-062 Rev E
SI facility plan	2.20	01
The traffic regulation plans		
Key Plan	2.11	WSP-70001979-SK-061 Rev I
Sheet 1	2.11A	WSP-70001979-SK-061 Rev H
Sheet 2	2.11B	WSP-70001979-SK-061 Rev E
Sheet 3	2.11C	WSP-70001979-SK-061 Rev F
Sheet 4	2.11D	WSP-70001979-SK-061 Rev A
The works plans		
Key Plan	2.2	Key Plan v1
Sheet 1	2.2A	Sheet 1 of 9 v1
Sheet 2	2.2B	Sheet 2 of 9 v1
Sheet 3	2.2C	Sheet 3 of 9 v1
Sheet 4	2.2D	Sheet 4 of 9 v1
Sheet 5	2.2E	Sheet 5 of 9 v1
Sheet 6	2.2F	Sheet 6 of 9 v1
Sheet 7	2.2G	Sheet 7 of 9 v1
Sheet 8	2.2H	Sheet 8 of 9 v1
Sheet 9	2.2I	Sheet 9 of 9 v1

#### Textual Amendments

**F20** Words in Sch. 15 para. 1 omitted (21.10.2020) by virtue of [The West Midlands Rail Freight Interchange \(Correction\) Order 2020 \(S.I. 2020/1163\)](#), arts. 1, **2(14)**

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order grants development consent for, and authorises Four Ashes Limited (“the undertaker”) to construct, operate and maintain, the new West Midlands Rail Freight Interchange together with associated development. The undertaker is authorised by the Order to acquire compulsorily land and rights over land. The Order also authorises the making of alterations to the highway network, stopping up and diversion of public rights of way and the discharge of water.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 45 (certification of plans and documents) of this Order may be inspected free of charge at the offices of South Staffordshire Council at Wolverhampton Road, Codsall, Wolverhampton, WV8 1PX.

**Status:**

Point in time view as at 21/10/2020.

**Changes to legislation:**

There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020.