

**2022 No. 922**

**INFRASTRUCTURE PLANNING**

**The Manston Airport Development Consent Order 2022**

*Made* - - - - *18th August 2022*

*Coming into force* - - *8th September 2022*

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b), for an Order.

The application was examined by a Panel of four members (“the Panel”) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The Panel, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 74(2) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the Panel, has decided to make an Order granting development consent for the development described in the application with modifications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 changes to the proposals comprised in the application.

The Secretary of State is satisfied that the special category land within the Order limits, when burdened with the rights imposed by this Order, will be no less advantageous than it was before to the persons in whom it is vested; other persons, if any, entitled to rights of common or other rights; and the public; and that, accordingly, section 132(3) of the 2008 Act applies.

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(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).  
 (b) 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, S.I. 2019/734 and S.I. 2020/1534.  
 (c) S.I. 2010/103, amended by S.I. 2012/635.

The Secretary of State, in exercise of the powers conferred by sections 114(a), 115(b), 117(c), 120(d) and 122(e) of, and paragraphs 1 to 4, 10 to 15, 17, 20, 23, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the Manston Airport Development Consent Order 2022 and comes into force on 8th September 2022.

#### **Interpretation**

2.—(1) In this Order—

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

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

“the 1972 Act” means the Local Government Act 1972(h)

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

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

“the 1982 Act” means the Civil Aviation Act 1982(k);

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

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

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

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

“access and rights of way plans” means the documents of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the access and rights of way plans for the purposes of this Order;

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

“airport-related” development means development directly related to and required to support operations at Manston Airport including, but not limited to, freight distribution centres, including freight forwarding and temporary storage facilities for airlines;

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

“authorised development” means the development and associated development described in Schedule 1 (authorised development) or any part of it, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

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- (a) Section 114 was amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
- (b) Section 115 was amended by paragraph 56 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
- (c) Section 117 was amended by paragraph 58 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011.
- (d) Section 120 was amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
- (e) Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
- (f) 1961 c. 33.
- (g) 1965 c. 56.
- (h) 1972 c. 70.
- (i) 1980 c. 66.
- (j) 1981 c. 66.
- (k) 1982 c. 16.
- (l) 1984 c. 27.
- (m) 1990 c. 8.
- (n) 1991 c. 22.
- (o) 2008 c. 29.

“book of reference” means the document of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the book of reference for the purposes of this Order;

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

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

“commence” means the carrying out of any material operation (as defined in section 155 (when development begins) of the 2008 Act) forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, diversion and laying of services, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or contractors’ signage and notices or installation of a site compound or any other temporary building or structure to the extent that these are not likely to harm heritage assets of national importance and their settings as defined in the further assessment of the historic character of the airfield under requirement 3(3)(a) and “commenced” and “commencement” are to be construed accordingly;

“consultative committee guidance” means the Guidelines for Airport Consultative Committees published by the Department for Transport in April 2014;

“crown land plan” means the document of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the crown land plan for the purposes of this Order;

“cycle track” has the same meaning as in the 1980 Act(a);

“design and access statement” means the documents of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the design and access statement for the purposes of this Order;

“design drawings” means the document of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the design drawings for the purposes of this Order;

“design guide” means the document of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the design guide for the purposes of this Order;

“electronic transmission” means a communication transmitted—

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

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the Communications Act 2003(b);

“engineering drawings and sections” means the documents of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the engineering drawings and sections for the purposes of this Order;

“environmental statement” means the document of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the environmental statement for the purposes of this Order;

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

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

“Kent County Council” means Kent County Council of County Hall, Maidstone, Kent ME14 1XQ;

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(a) The definition of “cycle track” (in section 329(1) of the 1980 Act) 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).

(b) 2003 c. 21. Section 32(1) was amended by S.I. 2011/1210.

“land plans” means the documents of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the land plans for the purposes of this Order;

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

“noise mitigation plan” means the document of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the noise mitigation plan for the purposes of this Order;

“Operation Stack” means the operations known as Operation Stack and Operation Brock administered by Kent Police and Highways England for the purpose of relieving congestion on the M20 motorway;

“Operation Stack land” means the land comprising Manston Airport, Manston Road, Manston, Kent and defined as ‘the land’ in the Town and Country Planning (Manston Airport) Special Development Order 2019(a);

“Order land” means the land shown on the land plans which is within the Order limits and described in the book of reference;

“the Order limits” means the limits of lands to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

“outline construction environmental management plan” means the document of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the outline construction environmental management plan 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(b);

“register of environmental actions and commitments” means the document of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the register of environmental actions and commitments for the purposes of this Order;

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

“relevant planning authority” means in any given provision of this Order, the planning authority for the area to which the provision relates;

“special category land plan” means the plan document of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the special category land plan for the purposes of this Order;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) or section 138(4A) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act;

“street” means a street within the meaning of section 48 (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 in section 121A(c) (traffic authorities) of the 1984 Act;

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(a) S.I. 2019/86.

(b) 1981 c. 67. The definition of “owner” was amended by section 70 of, and Schedule 15 to, the Planning and Compensation Act 1991 (c. 34).

(c) Section 121A was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the 1991 Act. It was amended by section 1(6) of, and paragraph 95(2) and (3) of Schedule 1 to, the Infrastructure Act 2015 (c. 7). There are other amendments to section 121A that are not relevant to this Order.

“traffic regulation order plans” means the documents of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the traffic regulation order plans for the purposes of this Order;

“undertaker” means RiverOak Strategic Partners Limited (company registration number 10269461) whose registered address is at Calder & Co, 30 Orange Street, London WC2H 7HF;

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

“works plans” means the documents of that description certified by the Secretary of State under article 41 (certification of documents, etc.) as the works plans for the purposes of this Order.

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

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

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

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the access and rights of way plans or the traffic regulation order plans.

(6) References in this Order to numbered works are references to works as numbered in Schedule 1 (authorised development).

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

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

(2) Any enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of this Order.

#### **Maintenance of authorised development**

4. 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.

#### **Maintenance of drainage works**

5.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(a).

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(a) 1991 c. 59. The definition was substituted by section 100(2) of the Environment Act 1995 (c. 25).

## Limits of deviation

6.—(1) In carrying out the authorised development the undertaker may—

- (a) construct each work only within its relevant work limits shown on the works plans;
- (b) deviate vertically downwards from the levels of the authorised development shown on the engineering drawings and sections to any extent except that any deviation to a point below existing ground level must be approved in writing by the Secretary of State in consultation with the Environment Agency and Southern Water; and
- (c) deviate vertically upwards from the levels of the authorised development shown on the engineering drawings and sections to a maximum of 2 metres except in relation to the parts of the authorised development referred to in column (1) of the table below, where the maximum height for each such part is set out in the corresponding entry in column (2) of that table—

<i>(1)</i> <i>Building or Structure</i>	<i>(2)</i> <i>Maximum Height (above ordnance datum)</i>
Cargo facilities constructed as part of Work No.1	67.3 metres
Business jet hangar constructed as part of Work No.2	66.1 metres
Fixed base operation hangars constructed as part of Work No.2	66.2 metres
Air traffic control tower constructed as part of Work No.3	74.0 metres
Radar tower constructed as part of Work No.4	74.0 metres
Terminal building constructed as part of Work No.12	59.6 metres
Fire station constructed as part of Work No.13	60.1 metres
Gatehouse constructed as part of Work No.14	53.2 metres
Gatehouse gantry constructed as part of Work No.14	57.2 metres
Commercial buildings constructed as part of Work No.15	66.5 metres
Commercial buildings constructed as part of Work No.16	64.2 metres
Commercial buildings constructed as part of Work No.17	64.5 metres
Aircraft recycling hangar constructed as part of Work No.18	72.8 metres
Fuel farm tanks constructed as part of Work No.19	51.0 metres

(2) The maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, Southern Water and the Environment Agency, certifies accordingly that a deviation in excess of these limits does not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(3) In any discrepancy in any heights cited in this article and heights cited elsewhere in this Order, notably in Schedule 1, then the lower of the two is the maximum height permitted.

(4) The authorised development may not deviate within the limits of deviation specified in this article if the deviation would be likely to harm heritage assets of national importance and their settings that are considered worthy of conservation by the relevant planning authority, Kent County Council and Historic England as informed by the further assessment required by requirement 3(3)(a).

## Benefit of Order

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



(2) 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 and other persons affected by the authorised development.

### **Consent to transfer benefit of Order**

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

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to Kent County Council for the purposes of undertaking Work Nos. 25, 26, 27, 28, 29, 30, 31 and 32.

### **Guarantees in respect of payment of compensation, etc.**

**9.**—(1) The authorised development must not be commenced, and the undertaker must not exercise the powers in articles 19 to 33, until—

- (a) subject to paragraph (3), security of £13.1 million has been provided in respect of the liabilities of the undertaker—
  - (i) to pay compensation to landowners in connection with the acquisition of their land or of rights over their land by the undertaker exercising its powers under Part 5 of this Order; and
  - (ii) to pay noise insulation costs and relocation costs as required by requirement 9 of Schedule 2; and
- (b) the Secretary of State has approved the security in writing.

(2) The security referred to in paragraph (1) may include, without limitation, any one or more of the following—

- (a) the deposit of a cash sum;
- (b) a payment into court;
- (c) an escrow account;
- (d) a bond provided by a financial institution;
- (e) an insurance policy;
- (f) a guarantee by a parent company or companies of the undertaker;
- (g) a guarantee by a person of a sufficient financial standing (other than the undertaker).

(3) The Secretary of State is to have no liability to pay compensation in respect of the compulsory acquisition of land or otherwise under this Order.

## PART 3

### STREETS

#### Application of the 1991 Act

**10.**—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(a) (dual carriageways and roundabouts) of the 1980 Act or section 184(b) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers of this Order—

- section 56(c) (power to give directions as to timing of street works);
- section 56A(d) (power to give directions as to placing of apparatus);
- section 58(e) (restrictions following substantial road works);
- section 58A(f) (restriction on works following substantial street works);
- section 73A(g) (power to require undertaker to re-surface street);
- section 73B(h) (power to specify timing etc. of re-surfacing);
- section 73C(i) (materials, workmanship and standard of re-surfacing);
- section 78A(j) (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A(k) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 12 (temporary stopping up and restriction of use of streets), whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(l) referred to in paragraph (4) are—

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- (a) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1965 (c. 51) and section 168(2) of, and Schedule 9 to, the 1991 Act.
  - (b) Section 184 was amended by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 8 and Schedule 9 to the 1991 Act, and sections 35, 38 and 46 of the Criminal Justice Act 1982 (c. 48).
  - (c) Section 56 was amended by sections 40 and 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
  - (d) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
  - (e) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the Traffic Management Act 2004.
  - (f) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
  - (g) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
  - (h) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
  - (i) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
  - (j) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
  - (k) Schedule 3A was inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004.
  - (l) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

section 54(a) (advance notice of certain works), subject to paragraph (6);  
section 55(b) (notice of starting date of works), subject to paragraph (6);  
section 57(c) (notice of emergency works);  
section 59(d) (general duty of street authority to co-ordinate works);  
section 60 (general duty of undertakers to co-operate);  
section 68 (facilities to be afforded to street authority);  
section 69 (works likely to affect other apparatus in the street);  
section 75 (inspection fees);  
section 76 (liability for cost of temporary traffic regulation); and  
section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 11 (construction and maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;
- (b) means that the undertaker is by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply.

### **Construction and maintenance of new, altered or diverted streets**

**11.—**(1) Any street to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the street lies and, unless otherwise agreed in writing with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion following a specified maintenance period to be agreed with the local highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority in whose area the street lies and, unless otherwise agreed in writing with the street authority, be maintained by and at the expense of the street authority from its completion.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;

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(a) Section 54 was also amended by section 49(1) of the Traffic Management Act 2004.

(b) Section 55 was also amended by sections 49(2) and 51(9) of the Traffic Management Act 2004.

(c) Section 57 was also amended by section 52(3) of the Traffic Management Act 2004.

(d) Section 59 was amended by section 42 of the Traffic Management Act 2004.

- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

### **Temporary stopping up and restriction of use of streets**

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

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

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article and which is within the Order limits as a temporary working site subject to the written consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

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

(4) The undertaker must not temporarily stop up, alter, divert or restrict any street without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

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

(6) If a street authority which receives a valid application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Permanent stopping up of public rights of way**

**13.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the public rights of way specified in column (1) of Parts 1 and 2 of Schedule 3 (permanent stopping up of public rights of way) to the extent specified and described in column (2) of that Schedule.

(2) No public right of way specified in column (1) of Part 1 of Schedule 3 is to be wholly or partly stopped up under this article unless—

- (a) the new public right of way to be constructed and substituted for it, which is specified in column (3) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the public right of way to be stopped up is first provided and subsequently maintained by the

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<sup>(a)</sup> Part 1 of the 1961 Act was amended by S.I. 2009/1307.

undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the public right of way until the completion and opening of the new public right of way in accordance with sub-paragraph (a).

(3) No public right of way specified in column (1) of Part 1 or Part 2 of Schedule 3 is to be wholly or partly stopped up under this article unless Kent County Council has been notified six weeks before any planned diversion or closure of the public right of way.

(4) Where a public right of way has been stopped up under this article—

- (a) all rights of way over or along the public right of way so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the public right of way 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 public right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(6) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped-up streets).

### **Access to works**

**14.** The undertaker may, for the purposes of the authorised development, and with the consent of the street authority, form and layout means of access, 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 provided that this does not result in any materially new or materially different environmental effects than those assessed in the environmental statement.

### **Traffic regulation**

**15.—**(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, at any time, for the purposes of the construction of the authorised development prohibit vehicular access, prohibit waiting of vehicles and regulate vehicular speed by imposing speed restrictions on vehicles in the manner specified in Schedule 4 (traffic regulation) on those roads specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Schedule.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes 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, waiting, loading or unloading of vehicles on any road;
- (c) 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.

(3) The powers conferred by paragraphs (1) and (2) may be exercised at any time prior to the expiry of 12 months from the part of the authorised development to which it relates being brought into operational use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraphs (1) and (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraphs (1) and (2) unless it has—

- (a) given not less than—
  - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
  - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraphs (1) and (2)—

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the road is situated, 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(a) (power of local authorities to provide parking places) of the 1984 Act,and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
- (b) is 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(b).

(7) 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 paragraphs (1) and (2) within a period of 24 months from the part of the authorised development to which it relates being brought into operational use.

(8) Before exercising the powers conferred by paragraphs (1) and (2) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

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

(10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraphs (1) and (2) the traffic authority is deemed to have granted consent.

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(a) Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.  
(b) 2004 c. 18.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**16.**—(1) Subject to paragraphs (3) and (4), 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) is to be determined as if it were a dispute under section 106(a) (right to communicate with public sewers) of the Water Industry Act 1991.

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

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, 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.

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

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

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

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.

#### **Protective work to buildings**

**17.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

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(a) 1991 c. 56. Section 106 was amended by sections 35(1), 35(8), and 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), and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(b) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.

(c) 1991 c. 57.

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 43 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and

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(a) Section 152 was amended by S.I. 2009/1307.



- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

#### **Authority to survey and investigate the land**

**18.**—(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 to 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 to 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 14 days' notice has been served on every owner and occupier of the land and on the Secretary of State.

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

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

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

- (a) in land located within a highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the 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 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

(7) The right of access under paragraph (1) will be suspended temporarily and with immediate effect in respect of the Operation Stack land and the undertaker must remove all apparatus and equipment from that land within two hours of the Secretary of State notifying the undertaker in writing that—

- (a) Operation Stack has been declared by Highways England or Kent Police; and
- (b) the imminent use of the Operation Stack land for lorry parking purposes would be incompatible with the exercise of rights notified to the Secretary of State under paragraph (2).

(8) The temporary suspension under paragraph (7) will end as soon as the Secretary of State has notified the undertaker, as soon as is practicable, of the date on which the use of Operation Stack land mentioned in paragraph (7)(b) has ceased.

## PART 5

### POWERS OF ACQUISITION AND POSSESSION

#### **Compulsory acquisition of land**

**19.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

(2) This article is subject to article 22 (compulsory acquisition of rights), article 23 (subsoil or new rights only to be acquired in certain land) and article 29 (temporary use of land for carrying out the authorised development).

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

**20.** Part 2 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) is incorporated in this Order subject to the modification that for “the acquiring authority” substitute “the undertaker”.

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

**21.**—(1) After the start date—

- (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(b) (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act).

(2) The authority conferred by article 29 (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 land after the end of that period, if the land was entered and possession was taken before the end of that period.

(3) For the purposes of this article “the start date” means the later of:

- (a) the end of the period of one calendar year beginning on the day after the period for legal challenge in section 118(c) (legal challenges relating to applications for orders granting development consent) of the 2008 Act expires; or
- (b) the final determination of any legal challenge under section 118 of the 2008 Act.

#### **Compulsory acquisition of rights**

**22.**—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to Schedule 2A(d) (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as modified by paragraph 5(9) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires a right over land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

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(a) 1981 c. 67.

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

(c) Section 118 was amended by section 128(2) of, and paragraph 59 of Schedule 13 and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

(d) Schedule 2A was inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016 (c. 22).

(4) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

### **Subsoil or new rights only to be acquired in certain land**

**23.**—(1) This article applies to the land specified in Schedule 7 (acquisition of subsoil and rights only).

(2) In the case of the land specified in Part 1 of Schedule 7, the undertaker's powers of compulsory acquisition under article 19 (compulsory acquisition of land) and article 22 (compulsory acquisition of rights) are limited to the acquisition of, or the acquisition of rights over, so much of the subsoil of that land as is required for the authorised development, or to facilitate it, or is incidental to it.

(3) In the case of the land specified in Part 2 of Schedule 7, the undertaker's powers of compulsory acquisition under article 19 and article 22 are limited at surface level and above to the acquisition of rights over so much of that land as is required for the authorised development, or to facilitate it, or is incidental to it.

### **Private rights over land**

**24.**—(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)(a) (powers 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) (powers of entry) of the 1965 Act,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(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 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 31 (statutory undertakers) applies.

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(a) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), paragraph 12(1) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1) and section 186(2) of the Housing and Planning Act 2016 (c. 22).

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

- (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 the rights over the land;
    - (ii) the undertaker’s appropriation of it;
    - (iii) the undertaker’s entry onto it; or
    - (iv) the undertaker’s taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
  - (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (8) If any such agreement as is 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 any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

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

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

(2) In section 4A(1)(b) (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 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the one year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Manston Airport Development Consent Order 2022”.

(3) In section 11A(c) (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) In subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 21 (time limit for exercise of authority to acquire land compulsorily) of the Manston Airport Development Consent Order 2022”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) after paragraph 29 insert—

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(a) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).  
(b) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.  
(c) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

## “PART 4 INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 17 (protective work to buildings), 28 (temporary use of land for carrying out the authorised development) or 29 (temporary use of land for maintaining the authorised development) of the Manston Airport Development Consent Order 2022.”

### **Application of the 1981 Act**

- 26.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as so applied, has effect with the modifications set out in this article.
- (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 other body or person authorised to acquire land by means of a compulsory purchase order.”.
- (4) In section 5(2)(a) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(b) (time limit for general vesting declaration).
- (6) In section 5B(1)(c) (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 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the one year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Manston Airport Development Consent Order 2022”.
- (7) In section 6(d) (notices after execution of declaration) for subsection (1)(b) substitute—
- “(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008,”.
- (8) In section 7(1)(a)(e) (constructive notice to treat), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1(f) (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 the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act as modified by article 25 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil or airspace only**

**27.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 19 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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- (a) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).
- (b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.
- (c) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016.
- (d) Section 6 was amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.
- (e) Section 7(1) was substituted by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.
- (f) Schedule A1 was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

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

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act or Schedule A1 to the 1981 Act from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

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

**28.**—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes 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 is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, will be entitled to compensation to be determined, in case of dispute, as if it were a 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.

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

**29.**—(1) The undertaker may, in connection with the carrying out of the authorised development but subject to article 21(2) (time limit for exercise of authority to acquire land compulsory)—

- (a) enter on and take temporary possession of—
  - (i) the land specified in column (1) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11(a) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(b) (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and

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(a) Section 11 was amended by section 34(1) of, and paragraph 14(3) of Schedule 4 to the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 16 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous provisions) Measure 2006 (2006 No. 1), sections 186(2), 187(2) and section 188 of, and paragraph 6 of Schedule 14 and paragraph 4 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22), and S.I. 2009/1307.

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

(d) construct any works on that land as are mentioned in Schedule 1 (authorised development).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(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 (3) of Schedule 8, or

(b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by 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.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace a building removed under this article;

(b) restore the land on which any permanent works have been constructed under paragraph (1)(d);

(c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or

(d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(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 this article.

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

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 27 (acquisition of subsoil or airspace only).

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

(11) Section 13(a) (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 (application of compulsory acquisition provisions) of the 2008 Act.

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(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and paragraph 1 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

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

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

- (a) enter upon 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; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(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 upon 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 and explain the purpose for which entry is taken.

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

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

(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, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, 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 (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 “the 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 opened for use.

### **Statutory undertakers**

**31.**—(1) Subject to the provisions of Schedule 9 (protective provisions), article 22 (compulsory acquisition of rights) and paragraph (2), the undertaker may—

- (a) acquire compulsorily or acquire new rights over any Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers over the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and



- (b) article 32 (apparatus and rights of statutory undertakers in stopped-up streets).

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

**32.**—(1) Where a street is stopped up under article 13 (permanent stopping up of public rights of way), 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 13 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 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 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 apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works 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 paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(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)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility 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.

(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 are to 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 are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

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

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a).

### **Recovery of costs of new connections**

**33.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31, any person who is—

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

(b) the owner of a private sewer which communicated with that sewer,

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

(3) This article does not have effect in relation to apparatus to which article 32 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

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

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

## **PART 6**

### **OPERATIONS**

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

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

(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 do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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(a) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.

(b) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.

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

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997(a) and includes important hedgerows for the purposes of those Regulations.

## PART 7

### MISCELLANEOUS AND GENERAL

#### **Abrogation of agreement**

35. The Manston Airport section 106 agreement(b) is hereby abrogated.

#### **Application of landlord and tenant law**

36.—(1) This article applies to—

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

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

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

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

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

#### **Removal of human remains**

37.—(1) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(2) Archaeological human remains will be identified, investigated and removed in accordance with the archaeological written scheme of investigation approved pursuant to requirement 16 of Schedule 2 (requirements) subject to the provisions of an exhumation licence under the Burial Act 1857(c).

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(a) S.I. 1997/1160.

(b) This agreement dated 26 September 2000 was made pursuant to section 106 (planning obligations) of the 1990 Act and the 1972 Act between Thanet District Council and Kent International Airport plc in respect of Manston Airport.

(c) 1857 c. 81.

(3) Before human remains that are non-archaeological are removed from the specified land the undertaker is to give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker is to send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person is to, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(8) The undertaker is to pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under powers conferred by this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land;
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days;
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10), the undertaker is to remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker is to comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under powers conferred by this article—

- (a) a certificate of re-interment or cremation is to be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to be sent by the undertaker to the relevant planning authority.

(12) The removal of the remains of any deceased person under powers conferred by this article is to be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(a) does not apply to a removal carried out in accordance with this article.

(15) Section 3 (burial not to take place after Order in Council for discontinuance, etc) of the Burial Act 1853(b) does not apply to a removal carried out in accordance with this article.

(16) In this article—

(a) “the specified land” means any land within the Order limits; and

(b) “Archaeological human remains” means human remains that date before 1900.

### **Defence to proceedings in respect of statutory nuisance**

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

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(e); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

### **Protection of interests**

**39.** Schedule 9 (protective provisions) has effect.

### **Crown rights**

**40.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any

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(a) Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (2014 No. 1) and section 96(1) of, and paragraph 1 of Schedule 3 to, the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (2018 No. 3).

(b) 1853 c. 134.

(c) 1990 c. 43. There are amendments to section 82(1) that are not relevant to this Order.

(d) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40). There are other amendments to section 82(2) that are not relevant to this Order.

(e) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to section 61 that are not relevant to this Order.

licensee to take, use, enter upon or in any manner interfere with any land or rights of any description—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown Land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions, and is deemed to have been given in writing where it is sent electronically.

### **Certification of documents, etc.**

**41.**—(1) As soon as practicable after the making of this Order the undertaker must submit copies of each of the plans and documents set out in Schedule 10 (documents to be certified) to the Secretary of State for certification that they are true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 10 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

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

### **Service of notices**

**42.**—(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 (5) 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(a) 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—

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(a) 1978 c. 30.

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

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

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

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven 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 will be final and will take effect on a date specified by the person in the notice but that date must not be less than seven 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 “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.

### **Arbitration**

**43.** 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 Lands Chamber of the Upper 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 the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

18th August 2022

*Natasha Kopala*  
Head of the Transport and Works Act Orders Unit  
Department for Transport

# SCHEDULES

## SCHEDULE 1

Article 2

### AUTHORISED DEVELOPMENT

#### **In the administration area of Thanet**

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 23 (airports) of the 2008 Act comprising:

**Work No.1** — The construction of airside cargo facilities and ancillary offices with a maximum building height of 20m and total combined cargo and office footprint of 65,500m<sup>2</sup>.

**Work No.2** — The construction of 8 light and business aircraft hangars and associated fixed base operator terminal with a maximum building height of 15m.

**Work No.3** — The construction of a new air traffic control centre to include—

- (a) an air traffic control tower with a maximum building height of 27m;
- (b) an airfield operations centre; and
- (c) associated parking.

**Work No.4** — The construction of a new modern radar installation to include—

- (a) a radar tower with a maximum building height of 27m;
- (b) an area of safeguarded land of 165m radius surrounded by a security fence to ensure uninterrupted radar operation; and
- (c) single storey ancillary structures to house equipment and provide maintenance access.

**Work No.5** — The construction of new or improved approach lights and navigational aids.

**Work No.6** — The construction of new or improved approach lights and navigational aids.

**Work No.7** — The rehabilitation of the existing 10/28 runway and runway shoulders.

**Work No.8** — The construction and rehabilitation of pavements for the safe movement and parking of aircraft and aircraft support vehicles and associated pavement infrastructure.

**Work No.9** — The construction and rehabilitation of pavements for the creation of 19 Code E aircraft parking stands and associated pavement infrastructure.

**Work No.10** — The construction and rehabilitation of pavements for the creation of 3 Code C aircraft parking stands and associated pavement infrastructure.

**Work No.11** — The construction and rehabilitation of pavements for the creation of 4 Code C aircraft parking stands and associated pavement infrastructure.

**Work No.13** — The construction of a new airport fire station and associated storage areas to include—

- (a) six full size emergency bay doors allowing front and rear entry;
- (b) a garage area with associated workshop;
- (c) a welfare and management area; and
- (d) a hardstanding area for tank storage of firefighting materials.



Associated development comprising:

**Work No.12** — The construction of a new passenger terminal facility with a maximum building height of 15m.

**Work No.14** — The construction of a gatehouse with a maximum height of 4m and vehicle control area to including vehicle lanes, a gantry with maximum height of 8m and a welfare facility for gatehouse staff.

**Work No.15** — The construction of airport-related commercial facilities (use class B1 and B8) with a maximum building height of 18m and with a total building footprint of up to 60,000m<sup>2</sup> including associated paved storage areas, parking and internal accessways.

**Work No.16** — The construction of airport-related commercial facilities (use class B8) with a maximum building height of 18m and with a total building footprint of up to 26,000m<sup>2</sup> to include associated paved storage areas, parking and internal accessways.

**Work No.17** — The construction of airport-related commercial facilities (use class B1) with a maximum building height of 10m and with a total building footprint of up to 30,000m<sup>2</sup> to include associated paved storage areas, parking and internal accessways.

**Work No.18** — The construction of a new aircraft recycling facility and associated offices with a maximum building height of 23m.

**Work No.19** — The construction of new or improved facilities to create an airport fuel farm on the site of an existing fuel storage facility.

**Work No.20** — The construction of an airside storage and maintenance area for cargo and stand equipment.

**Work No.21** — The construction of internal access roads and parking areas including passenger parking and parking overflow.

**Work No.22** — The construction of paved areas and visual screening for the proposed cargo areas to include an emergency assembly area, site access road and paved areas to support cargo facilities and air traffic control.

**Work No.23** — The construction of two new attenuation ponds for the purposes of treating, storing and discharging site drainage runoff.

**Work No.24** — Works to construct a diversion to an existing public right of way.

**Work No.25** — Public highway works to construct a new airport access.

**Work No.26** — Public highway works to junction of B2190 and B2050.

**Work No.27** — Public highway works to B2050 including new access provision.

**Work No.28** — Public highway upgrade to B2190.

**Work No.29** — Public highway upgrade to Manston Road.

**Work No.30** — Public highway upgrade to B2190.

**Work No.31** — Public highway upgrade to Manston Road.

**Work No.32** — Public highway works at new airport-related business park entrance on Manston Road.

In connection with the construction of any of those works, further associated development within the Order limits which does not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement consisting of—

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (c) ramps, means of access, non-motorised links, footpaths, footways, bridleways, cycle tracks and crossing facilities;
- (d) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, pollution control devices, wing walls, highway lighting, fencing and culverts;
- (e) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (f) works to place, alter, divert, relocate, remove or maintain the position of apparatus, services, plant and other equipment in a street, or in other land, including mains, sewers, drains, pipes, lights and cables;
- (g) landscaping, noise barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (h) works for the benefit or protection of land affected by the authorised development;
- (i) works required for the strengthening, improvement, maintenance, or reconstruction of any streets;
- (j) works to place, alter, remove or maintain road furniture;
- (k) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soils stripping and storage, site levelling);
- (l) the felling of trees and hedgerows;
- (m) establishment of site construction compounds, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting, haulage roads and other machinery, apparatus, works and conveniences;
- (n) the provisions of other works including service roads, internal site roads, pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction, operation or maintenance of the authorised development; and
- (o) such other works, working sites storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development which do not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement.

## SCHEDULE 2 REQUIREMENTS

Article 3

### PART 1 REQUIREMENTS

#### *Interpretation*

1. In this Schedule—

“bellyhold” means the cargo hold of a passenger aircraft used for freight;

“Biodiversity Unit” means a biodiversity unit as defined in accordance with the methodology outlined in the document entitled ‘Technical Paper: the metric for the biodiversity offsetting pilot in England’ published by the UK Department for Environment, Food and Rural Affairs in March 2012;

“cargo air transport movement” means landings or take-offs of aircraft engaged on the transport of freight or mail on commercial terms. All scheduled movements, including those operated empty and loaded charter movements are included, but passenger flights carrying bellyhold freight are not included;

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(a);

“general aviation movement” means landings or take-offs of all civil aviation operations other than scheduled air services and non-scheduled air transport operations for remuneration or hire. General aviation activities include but are not limited to training, business aviation, recreation, agriculture, transport of dangerously ill people and of urgently needed human organs, medical equipment and medicines, monitoring ground traffic movements from the air, civil search and rescue, law enforcement, aerial survey, pollution control and firefighting, and flying displays;

“habitable room” means a room used, or intended to be used for dwelling purposes including a kitchen but not a bathroom or utility room;

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981(b);

“operation environmental management plan” means the document of that name to be developed for each part of the authorised development prior to the relevant part being brought into operational use which will contain the environmental information needed for future maintenance and operation of that part of the authorised development;

“passenger air transport movement” means landings or take-offs of aircraft engaged on the transport of passengers on commercial terms. All scheduled movements, including those operated empty, loaded charter and air taxi movements are included; and

“scheduled” means planned according to a schedule and includes both scheduled and chartered flights.

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(a) S.I. 2017/1012.

(b) 1981 c. 69.

### *Time limits*

2. The authorised development must commence no later than the expiration of five years beginning with the date that this Order comes into force.

### *Development masterplans*

3.—(1) No part of the authorised development is to be commenced until there has been submitted to and approved by the relevant planning authority in consultation with Kent County Council and Historic England—

- (a) where the authorised development is to be constructed in a single part, a masterplan in respect of the entire authorised development; or
- (b) where the authorised development is to be constructed in two or more parts, a masterplan for the relevant part of the authorised development.

(2) The masterplan must—

- (a) where the development is to be constructed in a single part, include a masterplan illustrating the entire authorised development; or
- (b) where the authorised development is to be constructed in two or more parts, include—
  - (i) those elements of the authorised development which are to be developed in that part;
  - (ii) where it is the plan for the first part, the identification of the elements or areas of the authorised development which are to be constructed at a later date;
- (c) include an outline programme setting out the anticipated programme for construction of those elements of the authorised development comprised in the relevant masterplan; and
- (d) be substantially in accordance with the certified masterplan referred to in Schedule 10 of this Order.

(3) Before a masterplan is submitted under sub-paragraph (1) the undertaker must—

- (a) commission further assessment of the historic character of the airfield, historic buildings survey, and archaeological investigation, and assess the heritage significance of heritage assets and their settings;
- (b) consider that the conservation of heritage assets of national importance and their settings should be given great weight, and conflict between their conservation and the proposal avoided or minimise and
- (c) consult the relevant planning authority, Kent County Council and Historic England before submitting the masterplan for approval and report on the consultees' recommendations in the submission.

(4) Where a masterplan has been submitted to and approved by the relevant planning authority for a particular part of the authorised development—

- (a) the details to be submitted to the relevant planning authority to discharge any requirement may relate to that part only, in order that the construction and/or operation of that part may commence in accordance with the approved details; and
- (b) construction of that part must not commence until the relevant part of any requirement has been discharged.

(5) The authorised development must be carried out in accordance with the relevant approved masterplan.

### *Detailed design*

4.—(1) No part of the authorised development is to commence until details of the siting, design, external appearance, lighting, site access (including emergency access) and dimensions of any element of Work Nos. 1, 2, 3, 4, 12, 13, 14, 15, 16, 17, 18 or 20 contained in that part, which must accord with sub-paragraphs (2) and (3), have been submitted to and approved by the relevant planning authority in consultation with Kent County Council where relevant to its functions.

- (2) The authorised development must be carried out in general accordance with—
- (a) the engineering drawings and sections;
  - (b) the design drawings;
  - (c) the design principles contained in the design and access statement;
  - (d) the design guide; and
  - (e) the lighting scheme,

unless otherwise agreed in writing by the relevant planning authority provided that the relevant planning authority is satisfied that any departures from those documents do not give rise to any materially new or materially different environmental effects than those assessed in the environmental statement.

(3) Where amended details are approved by the relevant planning authority in relation to the documents referred to in sub-paragraph (2), those details are deemed to be substituted for the corresponding details in those documents and the undertaker must make those amended details available in electronic form for inspection by members of the public.

(4) Sub-paragraphs (2) and (3) are subject to the approvals required under sub-paragraph (1).

(5) The construction of the authorised development must be carried out in accordance with the details approved under sub-paragraph (1).

#### *Detailed design of fuel farm*

**5.**—(1) No part of Work No. 19 is to commence until the detailed design for that Work and details of safety processes associated with operation of that Work have been submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

(2) The details approved under sub-paragraph (1) must reflect the relevant actions and commitments set out in the register of environmental actions and commitments.

(3) The construction, maintenance and operation of Work No. 19 must be carried out in accordance with the details approved under sub-paragraph (1).

#### *Construction environmental management plan*

**6.**—(1) No part of the authorised development is to commence until a construction environmental management plan for that part, which must be substantially in accordance with the outline construction environmental management plan, has been submitted to, and approved in writing by, the relevant planning authority, following consultation with the relevant highway authority, the Environment Agency, Southern Water, Historic England, the Civil Aviation Authority and Natural England to the extent that it relates to matters relevant to their function.

(2) A construction environmental management plan approved under sub-paragraph (1) must contain—

- (a) the following plans, risk assessments and strategies—
  - (i) dust management plan;
  - (ii) mitigation and habitat creation plan;
  - (iii) environmental spillage plan;
  - (iv) unexploded ordnance threat and risk assessment;
  - (v) noise and vibration management plan;
  - (vi) construction traffic management plan;
  - (vii) public rights of way management plan;
  - (viii) construction emergency plan;
  - (ix) site waste management plan;
  - (x) construction risk assessment;

- (xi) carbon minimisation action plan;
  - (xii) construction emergency plan;
  - (xiii) tree survey and protection plan;
  - (xiv) construction safety management plan;
  - (xv) drainage strategy;
  - (xvi) pollution control plan;
  - (b) a record of the consents, commitments and permissions resulting from liaison with statutory bodies; and
  - (c) those mitigation measures set out in the register of environmental actions and commitments which are relevant to the construction of the authorised development.
- (3) Construction of each part of the authorised development must be carried out in accordance with the approved construction environmental management plan for that part.

*Operation environmental management plan*

7.—(1) No part of the authorised development is to begin operation until an operation environmental management plan for that part has been submitted to, and approved in writing by, the relevant planning authority, following consultation with the relevant highway authority, the Environment Agency, Southern Water, Historic England, the Civil Aviation Authority and Natural England to the extent that it relates to matters relevant to their function.

- (2) The operation environmental management plan must contain—
- (a) chapters addressing—
    - (i) environment and sustainability policies;
    - (ii) legal compliance;
    - (iii) reporting procedures;
    - (iv) obligations to be placed upon third parties including tenants and commercial users of the airport;
    - (v) stakeholder management and complaints procedures;
    - (vi) waste and materials management (including hazardous or abnormal substances);
    - (vii) noise management;
    - (viii) air quality management;
    - (ix) wildlife management;
    - (x) water and drainage;
    - (xi) traffic management and green travel planning;
    - (xii) landscape planting and maintenance;
    - (xiii) fuel storage and transport arrangements; and
    - (xiv) operational use of herbicides to control vegetation;
  - (b) plans, strategies and policy documents including—
    - (i) environmental spillage plan;
    - (ii) site waste management plan;
    - (iii) carbon minimisation action plan;
    - (iv) operational emergency plan;
    - (v) wildlife hazard management plan;
    - (vi) habitat management plan;
    - (vii) long grass policy;
    - (viii) emergency response and post-crash management plan;

- (ix) framework travel plan including freight management strategy;
  - (x) public rights of way management strategy;
  - (xi) car park management strategy;
  - (xii) airport management strategy;
  - (xiii) bus service enhancement scheme;
  - (xiv) airport surface access strategy;
  - (xv) HGV signage strategy; and
  - (xvi) lighting strategy substantially to meet the requirements set out in the draft lighting strategy;
- (c) the commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of that part of the authorised development;
  - (d) a record of the consents, commitments and permissions resulting from liaison with statutory bodies;
  - (e) those mitigation measures set out in the register of environmental actions and commitments which are relevant to the operation and maintenance of that part of the authorised development; and
  - (f) provision for a process under which the contents of the operation environmental management plan are continually reviewed against relevant best practice and any consequent changes are submitted for approval by the local planning authority.
- (3) Each part of the authorised development must be operated and maintained in accordance with the approved operation environmental management plan for that part.
- (4) No part of the authorised development is to begin operation until a bus service enhancement scheme, has been submitted to, and approved in writing by, the local highway authority. This must contain measures to enhance existing bus services and include shuttle bus service provision.

#### *Ecological mitigation*

- 8.—**(1) No part of the authorised development may be commenced until written details of the proposed on-site and off-site ecological mitigation for that part, the timetable for its implementation, its monitoring and management have been submitted to and approved by the local planning authority, in consultation with Natural England.
- (2) The details of mitigation approved under sub-paragraph (1) must incorporate a net gain of at least 10 Biodiversity Units across the Order limits and any land used for ecological mitigation purposes compared with the situation that existed prior to the commencement of the authorised development.
- (3) The ecological mitigation must be implemented, monitored and managed by the undertaker in accordance with the written details approved under sub-paragraph (1).

#### *Noise mitigation*

- 9.—**(1) The undertaker must fully implement the noise mitigation plan.
- (2) The authorised development must be operated in accordance with the noise mitigation plan.
- (3) No part of the authorised development is to commence until the measures set out in sections 2, 3, 4, 5 and 9 of the noise mitigation plan have been implemented.
- (4) Residential properties with habitable rooms within the 60dB LAeq (16 hour) day time contour will be eligible for noise insulation and ventilation as detailed in the noise mitigation plan.
- (5) The airport will be subject to an annual noise quota of 2000 between the hours of 06.00 and 07.00 as set out in paragraph 1.8 of the noise mitigation plan.

(6) Any aircraft which has a quota count of 4 or above cannot be scheduled to take-off or land at the airport between the hours of 06.00 and 07.00 as set out in paragraph 1.7 of the noise mitigation plan.

(7) The area enclosed by the 50dB(A) Leq16hr (07.00 to 23.00) contour must not exceed 35.8 sq km, and the area enclosed by the 40dB(A) Leq8hr (23.00 to 07.00) contour must not exceed 47.4 sq km as set out in paragraph 1.12 of the noise mitigation plan.

(8) In this requirement—

“LAeq (16 hour) day time contour” means the equivalent continuous sound level of aircraft noise during the average day; and

“quota count” means the amount of the quota assigned to one take-off or landing by the aircraft in question.

### *Landscaping*

**10.**—(1) No part of the authorised development is to commence, nor may powers under article 34 (felling or lopping of trees and removal of hedgerows) be exercised, until a landscaping scheme for that part, which sets out details of all proposed hard and soft landscaping works, has been submitted to and approved in writing by the local planning authority.

(2) A landscaping scheme referred to in sub-paragraph (1) must contain all relevant mitigation measures set out in the register of environmental actions and commitments.

(3) A landscaping scheme referred to in sub-paragraph (1) must be substantially in the form of the draft landscaping plan.

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

(5) The landscaping scheme approved under sub-paragraph (1) must be carried out in full.

(6) Any tree or shrub planted as part of the landscaping scheme that, within a period of 25 years after planting, is removed, dies or becomes in the reasonable opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

### *Contaminated land and groundwater*

**11.**—(1) In the event that land affected by contamination, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

(2) Where the undertaker determines that remediation of contamination identified in, on, or under land from detailed site investigations, or as an unexpected discovery, is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

(3) Any required and agreed remediation must be carried out in accordance with the scheme approved under sub-paragraph (2).

(4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation scheme approved under sub-paragraph (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action must be submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

(5) Prior to any part of the authorised development being occupied a verification report demonstrating the completion of the works set out in the approved remediation scheme and the



effectiveness of the remediation must be submitted to, and approved in writing by, the relevant planning authority. The report must include results of sampling and monitoring carried out in accordance with the verification plan approved under sub-paragraph (4) to demonstrate that the site remediation criteria have been met.

#### *Protected species*

**12.—**(1) No part of the authorised development is to commence until for that part final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by any part of the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

- (a) a protected species is shown to be present, or where there is reasonable likelihood of it being present;
- (b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and
- (c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph,

the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority following consultation with Natural England and Kent Wildlife Trust.

(3) The undertaker must consult with Natural England and Kent Wildlife Trust on the scheme referred to in sub-paragraph (2) prior to submission to the relevant planning authority for approval, except where a suitably qualified and experienced ecologist, holding a licence relating to the species in question, determines that the relevant works do not require a protected species licence.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the relevant planning authority after consultation with Natural England and Kent Wildlife Trust, and under any necessary licences.

#### *Surface and foul water drainage*

**13.—**(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage plan, containing all relevant mitigation measures set out in the register of environmental actions and commitments including means of pollution control and monitoring and drainage operation, have been submitted to and approved in writing by the relevant planning authority following consultation with the Environment Agency, Kent County Council, Natural England and Southern Water on matters related to their function.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the relevant planning authority following consultation with the Environment Agency, Kent County Council, Natural England and Southern Water on matters relating to their functions, provided that the Secretary of State is satisfied that any amendments to the approved details do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(3) No part of the authorised development is to begin operation until the construction of the entire surface and foul water drainage for that part is completed.

(4) Construction of the attenuation basins must be completed within the first phase of construction if construction is undertaken in phases.

### *Traffic management*

**14.**—(1) No part of the authorised development is to commence until a construction traffic management plan for that part has been submitted to and approved in writing by the relevant planning authority, following consultation with the Royal Mail.

(2) The authorised development must be constructed in accordance with the construction traffic management plan approved under sub-paragraph (1).

### *Piling and other intrusive works*

**15.**—(1) No operations consisting of piling or other intrusive works (including drilling) are to commence until a risk assessment and a method statement have been submitted to and approved in writing by the relevant planning authority following consultation with the Environment Agency and Southern Water.

(2) Operations subject to sub-paragraph (1) must be carried out in accordance with the method statement approved under sub-paragraph (1).

### *Archaeological remains*

**16.**—(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest, containing all relevant mitigation measures set out in the register of environmental actions and commitments, has been submitted to and approved in writing by the relevant planning authority, following consultation with Historic England and Kent County Council on matters related to their function.

(2) The authorised development must be carried out in accordance with the scheme approved under sub-paragraph (1).

(3) A copy of any analysis, reporting, publication or archiving required as part of the written scheme approved under sub-paragraph (1) must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme approved under sub-paragraph (1).

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported to the relevant planning authority, Historic England and Kent County Council as soon as reasonably practicable from the date they are identified.

(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date of any notice served under sub-paragraph (4) unless otherwise agreed in writing by the relevant planning authority in consultation with Historic England and Kent County Council.

(6) If the relevant planning authority determines in writing that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority in consultation with Historic England and Kent County Council.

### *Amendments to approved details*

**17.** With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing.

*Community consultative committee*

**18.**—(1) No part of the authorised development is to commence until the undertaker has established a community consultative committee pursuant to section 35(a) (facilities for consultation at certain aerodromes) of the 1982 Act.

(2) The constitution and proceedings of the community consultative committee established under sub-paragraph (1) must be in accordance with the consultative committee guidance.

*Airport-related commercial facilities*

**19.**—(1) Work Nos. 15, 16 and 17 must only be developed and used to have a direct relationship to and support the operation of Work Nos. 1 to 11 and 13.

(2) Buildings comprised in Work Nos. 15, 16 and 17 must not be occupied before

- (a) the aerodrome is granted European Union Aviation Safety Agency or Civil Aviation Authority certification; and
- (b) the commencement of operation of Work No. 1 (or any part thereof).

*Education, employment and skills plan*

**20.**—(1) No part of the authorised development is to commence until an employment and skills plan has been submitted to, and approved in writing by, the relevant planning authority, following consultation with the relevant local education authority to the extent that it relates to matters relevant to their function.

(2) The employment and skills plan must contain—

- (a) chapters addressing—
  - (i) legal compliance;
  - (ii) reporting procedures; and
  - (iii) obligations to be placed upon third parties including local educational establishments and bodies;
- (b) plans and policy documents including—
  - (i) a local hiring policy;
  - (ii) an education and skills policy; and
  - (iii) a workplace training policy;
- (c) provision for the establishment of a local employment partnership board to include the relevant planning authority and the relevant local education authority and other relevant stakeholders as appropriate, to assist in the delivery of the plans and policies listed under paragraph (b); and
- (d) provision for a process under which the contents of the employment and skills plan is continually reviewed against relevant best practice and any consequent changes are submitted for approval by the relevant planning authority.

(3) The employment and skills plan approved under sub-paragraph (1) must be implemented in full.

*Airport operation*

**21.**—(1) The operation of the airport is subject to—

- (a) a total annual cargo air transport movement limit of 17,170;
- (b) a total annual passenger air transport movement limit of 9,298; and

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(a) Section 35 was amended by section 83(5) of, and Schedule 6 to, the Airports Act 1986 (c. 31).

- (c) a total annual general aviation movement limit of 38,000.
- (2) No aircraft is to take-off or be scheduled to land between the hours of 23:00 and 06:00.
- (3) No passenger air transport departures are to take place between the hours of 09:00 and 11:30. There must only be one passenger air transport departure between the hours of 11:30 and 11:44 and one passenger air transport departure between the hours of 11:45 and 12:00. There must only be one scheduled passenger air transport arrival between the hours of 07:00 and 08:00.
- (4) No passenger air transport departures are to take place between the hours of 20:00 and 21:00. There must only be one passenger air transport arrival between the hours of 16:00 and 17:00; only two passenger air transport departures between the hours of 1800 and 19:00; and only one passenger air transport departure between the hours of 19:00 and 20:00.

#### *Highway improvements*

**22.** Work Nos. 26 to 31 must be completed in accordance with article 11 (construction and maintenance of new, altered or diverted streets) of this Order before any of Work Nos. 1, 2, 7, 12 or 15 to 20 commence operation.

#### *Monitoring*

**23.** No part of the authorised development is to begin operation until a monitoring, auditing and reporting plan for the register of environmental actions and commitments has been submitted to, and approved in writing by, the relevant planning authority, following consultation with the highway authority, the Environment Agency, Historic England, the Civil Aviation Authority and Natural England to the extent that it relates to matters relevant to their function.

#### *High Resolution Direction Finder*

**24.—(1)** No part of the authorised development must commence unless and until a detailed mitigation scheme to provide an alternate High Resolution Direction Finder, prepared by the undertaker and agreed in writing by the Ministry of Defence, has been submitted to the relevant planning authority. The detailed mitigation scheme must include siting location(s) for the alternate High Resolution Direction Finder, full specification for the equipment and infrastructure proposed, details of a programme, to test the new equipment as installed against the Ministry of Defence requirements for acceptance into service and the technical performance data necessary to establish safeguarding criteria to protect its subsequent operation.

(2) No part of the authorised development is permitted to be constructed within the zone protected by the Ministry of Defence (Manston) Technical Site Direction 2017 while the safeguarding direction is in force without the consent of the Secretary of State for Defence.

(3) No part of the authorised development must commence unless and until a programme for the decommissioning and removal of the existing High Resolution Direction Finder, prepared by the undertaker and submitted to and agreed in writing by the Ministry of Defence, has been submitted to the relevant planning authority. The decommissioning and removal of the existing High Resolution Direction Finder equipment must be carried out strictly in accordance with the details approved.

## **PART 2**

### **PROCEDURE FOR DISCHARGE OF REQUIREMENTS**

#### *Applications made under requirements*

**25.—(1)** Where an application has been made to a relevant planning authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order, the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under sub-paragraph (3); or
- (c) such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects than those assessed in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(3) In determining any application made to the relevant planning authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the relevant planning authority may—

- (a) may give or refuse its consent, agreement or approval; or
- (b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the relevant planning authority must provide its reasons for that decision with the notice of its decision.

(4) Where an application has been made under sub-paragraph (1), the relevant planning authority may request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.

(5) If the relevant planning authority or a requirement consultee considers further information is required, the relevant planning authority must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(6) If the relevant planning authority does not give the notification mentioned in sub-paragraph (4) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

#### *Fees*

**26.—**(1) Where an application is made to a relevant planning authority for any consent, agreement or approval required by a requirement, the fee for the discharge of conditions attached to a planning permission contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012<sup>(a)</sup> (as may be replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within a period of 35 days of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority fails to determine the application within a period of 8 weeks from the date on which it is received, unless within that period the undertaker agrees in writing that the fee may be retained by the relevant planning authority and credited in respect of a future application; or
- (c) a longer period where a longer time for determining the application has been agreed pursuant to paragraph 25(1)(c).

#### *Appeals*

**27.—**(1) The undertaker may appeal to the Secretary of State if—

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(a) S.I. 2012/2920, as amended by S.I. 2017/1314. There are other amendments to the Regulations that are not relevant to this Order.

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by—
    - (i) a requirement and any document referred to in any requirement in Part 1 of this Schedule; or
    - (ii) any other consent, agreement or approval required under this Order, or grants it subject to conditions to which the undertaker objects;
  - (b) the relevant authority does not give notice of its decision to the undertaker within the period specified in paragraph 25(1) or grants it subject to conditions;
  - (c) having received a request for further information under paragraph 25(4) the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
  - (d) having received any further information requested, the relevant 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 procedure 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) the expiry of the decision period as determined under paragraph 25;
  - (b) the undertaker must submit to the Secretary of State a copy of the application submitted to the relevant planning authority and any supporting documents which the undertaker may wish to provide (“the appeal documents”);
  - (c) the undertaker must on the same day provide copies of the appeal documents to the relevant planning authority and the requirement consultee (if applicable);
  - (d) as soon as is practicable after receiving the appeal documents the Secretary of State must appoint a person to determine the appeal (“the appointed person”)(a) and notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person must be sent;
  - (e) the relevant authority and the requirement consultee (if applicable) must submit any written representations in respect of the appeal to the appointed person within 10 business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person 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;
  - (f) the appeal parties may make any counter-submissions to the appointed person within 10 business days beginning with the first day immediately following the date of receipt of written representations pursuant to paragraph (d) above; and
  - (g) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.
- (3) If the appointed person considers that further information is necessary to consider 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 must be submitted.
- (4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person.
- (5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.

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(a) 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.

(6) Any such representations must be submitted to the appointed person and made available to all appeal parties within 10 business days of the date mentioned in sub-paragraph (3).

#### *Outcome of appeals*

**28.**—(1) On an appeal under paragraph 27, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning 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.

(2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed or set by the appointed person under this paragraph.

(3) The appointed person may proceed to a decision even though no written representations have been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(4) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(5) Any consent, agreement or approval given by the appointed person pursuant to this paragraph is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the relevant planning authority.

(6) The relevant planning 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) does not affect or invalidate the effect of the appointed person's determination.

(7) Except where a direction is given pursuant to sub-paragraph (8) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(8) On application by the relevant 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.

(9) In considering whether to make any such direction as to the costs of the appeal parties and the terms on which it is made, the appointed person must have regard to the Planning Practice Guidance or any guidance which may from time to time replace it.

#### *Interpretation of Part 2 of Schedule 2*

**29.** In Part 2 of Schedule 2—

“the appeal parties” means the relevant planning authority, the requirement consultee and the undertaker;

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

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

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(a) 1971 c. 80.

SCHEDULE 3

Article 13

PERMANENT STOPPING UP OF PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH A  
SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted</i>
TR8	Between RWST1.1 and RWST1.2 as shown on sheet 4 of the Access and Rights of Way Plans	Between RWDV1.1 and RWDV1.2 as shown on sheet 4 of the Access and Rights of Way Plans

PART 2

PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH NO  
SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
TR9	Between RWST2.1 and RWST2.2 as shown on sheet 4 of the Access and Rights of Way Plans



SCHEDULE 4

Article 15

TRAFFIC REGULATION

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent as shown on the Traffic Regulation Order Plans</i>	<i>(3)</i> <i>Restrictions</i>
B2050, B2190	Between points TRO1.1, TRO1.2, TRO1.3, TRO1.4 and TRO1.5 as shown on sheet 2.	Prohibition of vehicular access at any time.  No waiting restriction between 07.00 to 19.00 Monday to Sunday.  Speed limit to be reduced to 30mph for the duration of the construction of the authorised development.
B2190	Between points TRO2.1 as shown on sheet 1 and TRO2.2 as shown on sheet 2.	Prohibition of vehicular access at any time.  No waiting restriction between 07.00 to 19.00 Monday to Sunday.  Speed limit to be reduced to 30mph for the duration of the construction of the authorised development.
B2050	Between points TRO3.1 and TRO3.2 as shown on sheet 3.	Prohibition of vehicular access at any time.  No waiting restriction between 07.00 to 19.00 Monday to Sunday.  Speed limit to be reduced to 30mph for the duration of the construction of the authorised development.
Manston Road	Between points TRO4.1 and TRO4.2 as shown on sheet 3.	Prohibition of vehicular access at any time.  No waiting restriction between 07.00 to 19.00 Monday to Sunday.  Speed limit to be reduced to 30mph for the duration of the construction of the authorised development.
B2050	Between points TRO5.1 and TRO5.2 as shown on sheet 4.	Prohibition of vehicular access at any time.

<i>(1) Road</i>	<i>(2) Extent as shown on the Traffic Regulation Order Plans</i>	<i>(3) Restrictions</i>
		<p>No waiting restriction between 07.00 to 19.00 Monday to Sunday.</p> <p>Speed limit to be reduced to 30mph for the duration of the construction of the authorised development.</p>
B2190	Between points TRO6.1 as shown on sheet 1 and TRO6.2 as shown on sheet 2.	<p>Prohibition of vehicular access at any time.</p> <p>No waiting restriction between 07.00 to 19.00 Monday to Sunday.</p> <p>Speed limit to be reduced to 30mph for the duration of the construction of the authorised development.</p>

SCHEDULE 5

Article 22(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>
001, 002, 003, 004, 005, 006, 007, 008, 0009, 010, 011, 012, 013 and 014	The construction of new or improved approach lights and navigational aids (Work No.5).
019a	Access to airfield.
060, 061, 062, 063, 064, 065, 066 and 067	The construction of new or improved approach lights and navigational aids (Work No.6).
073	Access to Work No.19.
082, 110, 112, 118, 119, 120, 129, 131, 132, 138, 140, 141, 148, 150, 151, 156, 157, 158, 161, 177a, 177b, 185c, 185d, 187, 188 and 188a	Overground access to existing underground pipeline.

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

### *Compensation enactments*

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

**2.—**(1) Without limiting 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) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to the Manston Airport Development Consent Order 2022 (“the 2022 Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the 2022 Order) 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 where it entered on that land for the purpose of exercising that right.”.

**3.—**(1) Without limiting paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

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

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

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

**4.** Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisitions provisions) of the 2008 Act (and modified by article 25 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 19 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right —

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

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

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

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(a) 1973 c. 26.

- (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 (measures 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(a) (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 has it applies to a compulsory acquisition under article 19), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right; and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (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 25(4) is also modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

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

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), 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) and S.I. 2009/1307.
  - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
  - (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.
  - (d) Section 12 was amended by section 56(2) of and Part 1 of Schedule 9 to the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to, the Housing and Planning Act 2016.
  - (e) 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).
  - (f) 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 2A**  
**COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT**  
**IN NOTICE TO TREAT**

*Introduction*

**1.** This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the 1981 Act 1981 as applied by article 26 (application of the 1981 Act) in respect of the land to which the notice to treat relates.

**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 decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

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

**9.** If the acquiring authority serves 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 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 acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

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

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

SCHEDULE 7

Article 23

ACQUISITION OF SUBSOIL AND RIGHTS ONLY

PART 1

LAND IN WHICH ONLY SUBSOIL OR RIGHTS OVER SUBSOIL MAY BE ACQUIRED

<i>Plot reference number shown in land plans</i>
078, 079, 080, 083, 084, 085, 086, 088, 090, 092, 094, 096, 097, 098, 099, 100, 101, 102, 103, 104, 107, 109, 113, 114, 114a, 115, 116, 123, 124, 127, 130, 134, 136, 144, 145, 147, 152, 153, 154, 162, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 185a and 185e

PART 2

LAND IN WHICH ONLY NEW RIGHTS MAY BE ACQUIRED AT SURFACE LEVEL OR ABOVE

<i>Plot reference number shown on land plans</i>
081, 095, 108, 111, 117, 128, 133, 142, 143, 146, 149, 155, 159, 160, 177c, 185b, 185f and 186



SCHEDULE 8

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
018	Highway improvements	Works Nos. 25, 26, 28 and 30
018a	Highway improvements	Works Nos. 26 and 30
018b, 042a, 044 and 045a	Highway improvements	Work No.26
045	Highway improvements	Works Nos. 26, 29, 31 and 32

## SCHEDULE 9

Articles 31 and 39

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

1. The following 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 alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker for the purposes of electricity supply;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(c); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(d) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104(e) (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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- (a) 1989 c. 29. The definition of “electrical plant” in section 64 of the Act was amended by paragraph 38 of Schedule 6 to the Utilities Act 2000 (c. 27).
  - (b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27), section 149(1) and (5) of the Energy Act 2004 (c. 20) and S.I. 2011/2704.
  - (c) 1991 c. 56.
  - (d) 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).
  - (e) 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).

“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) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
  - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

#### *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 13 (permanent stopping up of public rights of way), 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 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 12 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

#### *Protective works to buildings*

5. The undertaker, in the case of the powers conferred by article 17 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

#### *Acquisition of land*

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

#### *Removal of apparatus*

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice

of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as 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 43 (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 43, and after the grant to the utility undertaker 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.

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

#### *Facilities and rights for alternative apparatus*

**8.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 43 (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*

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

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of

the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

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

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

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

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

#### *Expenses and costs*

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

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under subparagraph (1), 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 determined by arbitration in accordance with article 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus 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 pipe or 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.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to

confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**11.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or 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 those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

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

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

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker 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*

**12.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use 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.

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

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

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

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

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(a) 2003 c. 21.

“electronic communications apparatus” has the same meaning as in the electronic communications code<sup>(a)</sup>;

“the electronic communications code” has the same meaning as in section 106(1)(b) (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 reference to providing an infrastructure system is to be construed in accordance with paragraph 7(2) of that code; and

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

**16.** The exercise of the powers conferred by article 31 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

**17.—**(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from 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 43 (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.

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(a) 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).

(b) Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

## PART 3

### FOR PROTECTION OF NETWORK RAIL

**18.** The following provisions of this Part of this Schedule shall have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 32, any other person on whom rights or obligations are conferred by that paragraph.

**19.** 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 of powers under section 8 (licences) of the Railways Act 1993(a);

“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(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network 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 Infrastructure Limited 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.

**20.—**(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 shall—

- (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

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(a) 1991 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.

(b) 2006 c. 46.



- (b) use their 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.

(3) The undertaker shall 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.

(4) The undertaker shall not under the powers of this Order extinguish 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 shall not be unreasonably withheld but may be given subject to reasonable conditions.

**21.—**(1) The undertaker shall 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 shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall 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 or her disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his or her 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 approval or disapproval, the engineer 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 shall construct it without unreasonable 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 or her approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's 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 work), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case without unreasonable delay and the undertaker shall not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to his or her reasonable satisfaction.

**22.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 21(4) shall, when commenced, be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 21;
- (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 shall, notwithstanding any such approval, make good such damage and shall 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 shall impose 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.

**23.** The undertaker shall—

- (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 or she may reasonably require with regard to a specified work or the method of constructing it.

**24.** Network Rail shall 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 shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**25.—**(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 shall be specified in the notice), the undertaker shall 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 shall assume construction of that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 22(3), 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 shall, in respect of the capitalised sums referred to in this paragraph and paragraph 26(a) 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 shall be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**26.** The undertaker shall 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 21(3) or in constructing any protective works under the provisions of paragraph 21(4) 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 and otherwise in connection with the implementation of the provisions of this Part of this Schedule;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-person 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, be required 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 work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

27.—(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 21(1) 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 21(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (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 21(1) have effect subject to the 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) any modifications must be carried out and completed by the undertaker in accordance with sub-paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 31(1) 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 26(a) 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 43 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Electrical Engineers.

**28.** 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 shall, 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.

**29.** The undertaker shall 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 shall have first consulted Network Rail and it shall 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.

**30.** Any additional expenses which Network Rail may reasonably and properly 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 shall, 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.

**31.—(1)** The undertaker shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part 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 shall 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 the engineer's 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 shall 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) are 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 shall 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.

**32.** Network Rail shall, on receipt of a request from the undertaker, from time to time provide the undertaker with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs mentioned in paragraph 31) 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).

**33.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there shall 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 or increasing the sums so payable. 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.

**34.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993. The undertaker shall 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 8 (consent to transfer benefit of Order) of this Order and

any such notice shall be given no later than 28 days before any such application is made and shall 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.

**35.** Any difference or dispute arising between the undertaker and Network Rail under this Part of this Schedule shall be referred to and settled by arbitration under article 43 (arbitration).

## SCHEDULE 10

Article 41

### DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Version</i>
access and rights of way plans	TR020002/APP/4.6	1
book of reference	TR020002/APP/3.3	4
crown land plan	TR020002/APP/4.3	1
design and access statement	TR020002/APP/7.3	1
design drawings	TR020002/APP/4.14	1
design guide	TR020002/D4/DG	1
engineering drawings and sections	TR020002/APP/4.13	1
environmental statement	TR020002/APP/5.2	1
land plans	TR020002/APP/4.2	1
draft lighting strategy (appendix A)	TR020002/D6/LV.1.36	1
outline masterplan	TR020002/APP/7.1	1
noise mitigation plan	TR020002/APP/2.4	5
outline construction environmental management plan	TR020002/APP/2.6	1
register of environmental actions and commitments	TR020002/APP/2.5	2
special category land plan	TR020002/APP/4.5	1
traffic regulation order plans	TR020002/APP/4.8	1
works plans	TR020002/APP/4.4	2

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises RiverOak Strategic Partners Limited to undertake works to redevelop Manston Airport in Thanet, Kent and carry out all associated works.

The Order permits RiverOak Strategic Partnerships Limited to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also includes provisions in connection with the maintenance and operation of the authorised development.

A copy of the documents referred to in Schedule 10 to this Order and certified in accordance with article 41 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at RiverOak Strategic Partners Limited, 50 Broadway, London SW1H 0BL.

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