

# SCHEDULES

## SCHEDULE 2

Article 3

### REQUIREMENTS

#### 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<sup>(1)</sup>;

“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<sup>(2)</sup>;

“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;

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(1) S.I. 2017/1012.

(2) 1981 c. 69.

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“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.

*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

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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.

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(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;

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- (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(3) (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.

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

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*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
  - (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 18:00 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

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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(4) (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

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(4) [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.

- (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—
- (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”)(5) 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.

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(5) 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.

*Status: This is the original version (as it was originally made).*

(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.

(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<sup>(6)</sup>; 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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<sup>(6)</sup> 1971 c. 80.