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STATUTORY INSTRUMENTS

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**2022 No. 1194**

**INFRASTRUCTURE PLANNING**

**The Portishead Branch Line (MetroWest Phase 1) Order 2022**

*Made* - - - - *14th November 2022*

*Coming into force* - - *5th December 2022*

An application has been made to the Secretary of State under section 37 of the Planning Act 2008<sup>(1)</sup> (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>(2)</sup> for an order granting development consent.

The application was examined in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010<sup>(3)</sup> by a Panel of two members (“the Panel”) appointed by the Secretary of State in accordance with Chapter 2 of Part 6 of the 2008 Act.

The Panel, having considered the representations made and not withdrawn and the application with the accompanying documents, has, in accordance with section 74(2) of the 2008 Act, made a report and recommendation to the Secretary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The Secretary of State, having considered the representations made and not withdrawn and the report of the Panel, has decided to make an Order granting development consent for the development described in the application with modifications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 change to the proposals comprised in the application.

In accordance with section 131(5) of the 2008 Act the Secretary of State is satisfied that where this Order authorises the compulsory acquisition of land forming part of an open space being the cycle track special category land (as defined in article 54 of this Order) that land is less than 200 square metres in extent and the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

In accordance with section 132(3) of the 2008 Act the Secretary of State is satisfied that where this Order authorises the compulsory acquisition of a right over other land forming part of an open space that land, when burdened with the order right, 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 in the land, and the public.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 20, 23, 24, 26, 33, 34, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

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

## PART 1

### Preliminary

#### Citation and commencement

1. This Order may be cited as the Portishead Branch Line (MetroWest Phase 1) Order 2022 and comes into force on 5th December 2022.

#### Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961<sup>(4)</sup>;

“the 1965 Act” means the Compulsory Purchase Act 1965<sup>(5)</sup>;

“the 1980 Act” means the Highways Act 1980<sup>(6)</sup>;

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(7)</sup>;

“the 1984 Act” means the Road Traffic Regulation Act 1984<sup>(8)</sup>;

“the 1990 Act” means the Town and Country Planning Act 1990<sup>(9)</sup>;

“the 1991 Act” means the New Roads and Street Works Act 1991<sup>(10)</sup>;

“the 2003 Act” means the Communications Act 2003<sup>(11)</sup>;

“the 2008 Act” means the Planning Act 2008;

“the 2017 Act” means the Neighbourhood Planning Act 2017<sup>(12)</sup>;

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

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

“authorised railway works” means those parts of the authorised development that are on land that is or will become operational railway land;

“Avon Gorge Woodlands SAC” means the Avon Gorge Woodlands Special Area of Conservation (EU Code UK0012734);

“Avon Gorge Vegetation Management Plan” means the management plan for the management of the construction of the authorised development within the Avon Gorge Woodlands SAC agreed by Network Rail and the undertaker in consultation with Natural England and certified as such by the Secretary of State;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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(4) 1961 c. 33.  
(5) 1965 c. 56.  
(6) 1980 c. 66.  
(7) 1981 c. 66.  
(8) 1984 c. 27.  
(9) 1990 c. 8.  
(10) 1991 c. 22.  
(11) 2003 c. 21.  
(12) 2017 c. 20.

“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;

“COCP” means the document certified as the code of construction practice by the Secretary of State for the purposes of this Order;

“commence” means beginning to carry out 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, archaeological investigations, receipt and erection of construction plant and equipment, utility diversions, laying out of compounds, works to clear watercourses, erection of any temporary means of enclosure, erection of protective fencing, the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“compounds, haul roads and access to works plan” means the document certified by the Secretary of State as the compounds, haul roads and access to works plan for the purposes of this Order;

“crossings to be extinguished plans” means the plans certified as the crossings to be extinguished plans by the Secretary of State for the purposes of this Order;

“CTMP” means the document certified as the construction traffic management plan by the Secretary of State for the purposes of this Order;

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

“design drawings” means the drawings described as such in Schedule 17 (documents to be certified) and certified as the design drawings by the Secretary of State 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 provided it is in electronic form,

and in this definition “electronic communications network” has the same meaning as in section 32(1)<sup>(14)</sup> (meaning of electronic communications and networks and services) of the 2003 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“first open for use” means—

- (a) in respect of railway related activities, the date on which Work Nos. 1, 1A and 1B are first used for revenue earning purposes by the passage of passenger carrying railway vehicles; and
- (b) in respect of highway related activities, the date on which the new highway is first available for the public to pass and repass;

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

“hedgerow location plan” means the plan certified as the hedgerow location plan by the Secretary of State for the purposes of this Order;

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

“IDB” means the North Somerset Levels Internal Drainage Board;

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

<sup>(14)</sup> Section 32(1) was amended by S.I. 2011/1210.

“important hedgerow plan” means the plan certified as the important hedgerow plan by the Secretary of State for the purposes of this Order;

“land plan” means the plans certified as the land plan by the Secretary of State for the purposes of this Order;

“maintain” includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, remove, reconstruct, replace or improve in relation to the authorised development and any derivative of “maintain” is to be construed accordingly;

“Master CEMP” means the document certified as the master construction environmental management plan by the Secretary of State for the purposes of this Order;

“National Highways” means National Highways Limited, company number 9346363, and includes any successor in function authorised to operate the strategic highway network in the area in which the authorised development is located;

“Network Rail” means Network Rail Infrastructure Limited, company registration number 02904587 whose registered office is at 1 Eversholt Street, London, NW1 2DN, and includes any successor in function to Network Rail authorised to operate that part of the national rail network that the authorised development is or will be included in;

“new highways plans” means the plans certified as the new highways plans by the Secretary of State for the purpose of this Order;

“operational railway land” means—

- (a) land required permanently for the construction and operation of Work Nos. 1, 1A and 1B;
- (b) any part of the existing railway corridor owned by Network Rail between Ashton Junction and Portbury Junction; and
- (c) land forming permanent maintenance compounds held by Network Rail for the maintenance of the railways referred to in sub-paragraphs (a) and (b),

and includes associated works, structures, embankments, cuttings, stations, bridges and culverts;

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

“Order limits” means the Order limits shown on the works plans;

“owner” in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981<sup>(15)</sup>;

“permanent and temporary stopping up and diversion plan” means the plan certified as the permanent and temporary stopping up and diversion plan by the Secretary of State for the purposes of this Order;

“permanent traffic regulation order plans” means the documents certified as the permanent traffic regulation order plans by the Secretary of State for the purposes of this Order;

“Portishead Railway Acts” means the Bristol and Portishead Pier and Railway Act 1863<sup>(16)</sup> and the Bristol and Portishead Pier and Railway Act 1866<sup>(17)</sup>;

“private means of access” means a private access to the highway network from neighbouring land;

“relevant highway authority” means North Somerset District Council for highways within the administrative area of North Somerset District Council and Bristol City Council for highways

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<sup>(15)</sup> 1981 c. 67. The definition of “owner” was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

<sup>(16)</sup> 26 & 27 Vict. c. cvii.

<sup>(17)</sup> 29 & 30 Vict. c. lxxxviii.

within the administrative area of Bristol City Council or any successor highway authority to those authorities;

“relevant lead local flood authority” means North Somerset District Council for land within the administrative area of North Somerset District Council and Bristol City Council for land within the administrative area of Bristol City Council as lead local flood authority and any successor flood authority to these authorities;

“relevant planning authority” for land within the administrative area of North Somerset District Council means North Somerset District Council or for land within the administrative area of Bristol City Council means Bristol City Council or any successor planning authority to those authorities;

“section drawings” means the drawings certified as the section drawings by the Secretary of State for the purposes of this Order;

“statutory undertaker” has the same meaning as in section 127(8) (statutory undertakers’ land) 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(18) (traffic authorities) of the 1984 Act;

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

“undertaker” means—

- (a) North Somerset District Council; and
- (b) subject to articles 9 (benefit of Order), 10 (consent to transfer benefit of Order) and 11 (agreements with Network Rail) any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act for such time as that section applies to that person;

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

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

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

(3) References in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or which is an interest otherwise comprised in the Order land.

(4) All distances, directions, lengths and areas 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.

(5) References in this Order to points identified by letters, with or without numbers, are to be construed as references to points so lettered on the relevant plans.

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

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(18) Section 121A was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the 1991 Act.

### **Incorporation of the Railway Clauses Acts**

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(19) are incorporated in this Order—

- (a) section 46 (crossing of roads – level crossings), subject to paragraph (4);
- (b) section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;
- (c) section 61 (company to make sufficient approaches and fences to highways crossing on the level);
- (d) section 68 (accommodation works by company);
- (e) section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;
- (f) sections 72 and 73 (supplementary provisions relating to accommodation works);
- (g) section 77 (presumption that minerals excepted from acquisition of land);
- (h) sections 78 to 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(20); and
- (i) section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”.

(2) The following provisions of the Railways Clauses Act 1863(21) are incorporated in this Order—

- (a) sections 5 and 7 (level crossings); and
- (b) section 12 (signals, watchmen etc.).

(3) In those provisions, as incorporated in this Order—

“the company” means the undertaker and, for land that is within that part of the Order limits which is either existing operational railway or which will become operational railway, Network Rail;

“goods” includes anything conveyed on the railway authorised to be constructed by this Order;

“lease” includes an agreement for a lease;

“prescribed” in relation to any such provision means prescribed by this Order for the purposes of that provision;

“the railway” means any railway authorised to be constructed by this Order and any other authorised development; and

“the special Act” means this Order.

(4) In section 46 of the Railways Clauses Consolidation Act 1845, as incorporated in this Order, for the proviso there is substituted “provided always that, with the consent of the relevant highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level”.

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(19) 1845 c. 20. Section 46 was amended by section 109(1) and (3) of, and paragraph 22 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39). Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c. 101). Section 78 was amended by section 39(3) of, and Schedule 7 to, the Compulsory Purchase Act 1965 (c. 56) and S.I. 2009/1307. Section 105 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949, section 31(6) of the Criminal Law Act 1977 (c. 45) and sections 37 and 49 of the Criminal Justice Act 1982 (c. 48).

(20) 1923 c. 20. Section 15 was amended by section 10(1) of the Decimal Currency Act 1969 (c. 19).

(21) 1863 c. 92.

## PART 2

### Principal powers

#### Application and modification of legislation

4.—(1) The provisions of Chapter 1 of Part 2 of the 2017 Act do not apply as regards the temporary possession or use of land under articles 33 (temporary use of land for carrying out the authorised development) and 34 (temporary use of land for maintaining the authorised development) of this Order or to anything else done under this Order.

(2) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010<sup>(22)</sup> any building comprised in the authorised development is deemed to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

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

5. 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.

#### Planning permission

6.—(1) If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the development authorised by this Order,

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

(2) The provisions of this Order do not preclude or apply to any development, or any part of a development, which is carried out by, or used by, Network Rail on any land (whether or not within the Order limits)—

- (a) that is or will become operational railway land and is carried out in accordance with any planning permission granted under the 1990 Act including a planning permission granted under article 3 and Class A of Part 8 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015<sup>(23)</sup>; or
- (b) that is carried out in accordance with any planning permission granted under the 1990 Act including a planning permission granted under article 3 and Class A of Part 18 of Schedule 2 to that Order.

#### Limits of deviation

7.—(1) In constructing or maintaining Work Nos. 1, 1A, 1B and 1C the undertaker may deviate—

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<sup>(22)</sup> S.I. 2010/948.

<sup>(23)</sup> S.I. 2015/596.

- (a) laterally from the lines or situations shown on the works plans to the extent of the limits of deviation so shown for the work; and
- (b) vertically from the levels shown on the section drawings—
  - (i) to any extent upwards not exceeding 0.5 metres; and
  - (ii) to any extent downwards not exceeding 0.5 metres.

(2) In constructing or maintaining any other work comprised in the authorised development the undertaker must construct any such work within the extents of work shown on the works plans for the relevant work.

### **Maintenance of authorised development**

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

(2) Paragraph (1) does not authorise any works which are likely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

### **Benefit of Order**

9. Subject to article 10 (consent to transfer benefit of Order) and article 11 (agreements with Network Rail) the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

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

10.—(1) 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 and the consent of Network Rail are required for a transfer or grant under this article unless such transfer or grant is to Network Rail in accordance with an agreement made under article 11.

### **Agreements with Network Rail**

11.—(1) The undertaker and Network Rail may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of—

- (a) the authorised development or any part of the authorised development; and
- (b) any works required for the purposes of or in connection with the authorised development, by Network Rail or by the undertaker, or by the undertaker and Network Rail jointly.



(2) Any agreement made pursuant to the powers conferred by this article may contain such incidental, consequential or supplementary provisions as may be agreed, including (but without limitation on the scope of paragraph (1)), provisions—

- (a) with respect to the defraying of, or the making of contributions towards, the cost of such construction, maintenance, use and operation as are referred to in paragraph (1) by the undertaker or by Network Rail or by the undertaker and Network Rail jointly;
- (b) for the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of all or any of the powers and rights of Network Rail and the undertaker (as the case may be) in respect of any of the authorised development and any works required for the purposes of, or in connection with, those works; and
- (c) without limitation on the scope of sub-paragraph (b), for the exercise by Network Rail, or by Network Rail and the undertaker jointly, of all or any of the powers under this Order for, or relating to, the compulsory acquisition or the taking of temporary possession of any land or rights over land.

(3) The exercise by the undertaker or Network Rail or by the undertaker and Network Rail jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (1) is subject to all statutory and contractual provisions relating to it as would apply if such powers and rights were exercised by the undertaker or Network Rail (as the case may be) alone, and accordingly such provisions, with any necessary modifications, apply to the exercise of such powers and rights by the undertaker or Network Rail or by the undertaker and Network Rail jointly, as the case may be.

(4) The undertaker and Network Rail may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail or the undertaker, or the undertaker and Network Rail jointly of—

- (a) any of the authorised development or any part of that development; or
- (b) any works, lands or other property required for the purposes of the authorised development or in connection with such development,

together with any rights and obligations (whether or not statutory) of Network Rail or the undertaker relating to them.

## PART 3

### Streets, Highways and Level Crossings

#### Application of the 1991 Act

**12.**—(1) Works carried out 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 transport 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(24) (dual carriageways and roundabouts) of the 1980 Act.

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

- (a) section 56**(25)** (power to give directions as to timing of street works);
- (b) section 56A**(26)** (power to give directions as to placing of apparatus);
- (c) section 58**(27)** (restriction on works following substantial road works);
- (d) section 58A**(28)** (restriction on works following substantial street works); and
- (e) section 73A (power to require undertaker to re-surface street);
- (f) section 73B (power to specify timing etc. of re-surfacing);
- (g) section 73C (materials, workmanship and standard of re-surfacing);
- (h) section 78A (contributions to costs of re-surfacing by undertaker); and
- (i) Schedule 3A**(29)** (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 carrying out 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 the carrying out of works under article 13 (street works and power to alter the layout etc. of streets) or any stopping up, alteration or diversion of a street under article 15 (temporary stopping up of streets and public rights of way) whether or not the carrying out of such works constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act**(30)** referred to in paragraph (4) are—

- (a) section 54**(31)** (advance notice of certain works), subject to paragraph (6);
- (b) section 55**(32)** (notice of starting date of works), subject to paragraph (6);
- (c) section 57**(33)** (notice of emergency works);
- (d) section 59**(34)** (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 76 (liability for cost of temporary traffic regulation); and
- (i) 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 included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

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**(25)** Section 56 was amended by sections 40 and 43 of the Traffic Management Act 2004 (c. 18).

**(26)** Section 56A was inserted by section 44 of the Traffic Management Act 2004.

**(27)** Sections 58 was amended by section 51 of the Traffic Management Act 2004.

**(28)** Section 58A was inserted by section 52(1) of the Traffic Management Act 2004.

**(29)** Schedule 3A was inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004.

**(30)** 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.

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

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

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

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

### **Street works and power to alter the layout etc. of streets**

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

- (a) break up or open the street, or any sewer, drain or tunnel within or under it;
- (b) tunnel or bore under the street or carry out any works to strengthen or repair the carriageway;
- (c) remove or use all earth and material in or under the street;
- (d) place and keep apparatus under the street;
- (e) maintain, alter or renew apparatus in the street or change its position;
- (f) demolish, remove, replace and relocate any street furniture within the street;
- (g) execute any works to improve sight lines;
- (h) execute and maintain any works to provide hard and soft landscaping;
- (i) carry out re-lining and placement of road markings;
- (j) remove and install temporary and permanent signage;
- (k) make and maintain crossovers and passing places;
- (l) execute any works of surfacing or re-surfacing of the highway; and
- (m) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (l).

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to paragraph (4), the undertaker may, for the purposes of constructing and maintaining any part of the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, the undertaker may—

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

(3) The undertaker must restore to the reasonable satisfaction of the street authority any street which has been temporarily altered under this article.

(4) The powers conferred by paragraph (2) are not to be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

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

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

- (a) stop up the street specified in columns (1) and (2) of Part 1 of Schedule 4 (streets to be stopped up) to the extent specified in column (3) of that part of that Schedule; and
- (b) stop up the streets specified in columns (1) and (2) of Part 2 of Schedule 4 to the extent specified in column (3) of that part of that Schedule.

(2) The street specified in columns (1) and (2) of Part 1 of Schedule 4 is not to be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule, has been constructed and 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 street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).
- (3) Where a street has been stopped up under this article—
- (a) all rights of way over or along the street so stopped up are extinguished; and
  - (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.
- (4) Any person who suffers loss by the extinguishment of any private right of way or private means of access 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.
- (5) This article is subject to article 42 (apparatus and rights of statutory undertakers in stopped up streets).

### **Temporary stopping up of streets and public rights of way**

**15.**—(1) Subject to paragraph (4) the undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street or public right of way or any part of a street or public right of way within the Order limits and may for any reasonable time—

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

(2) Without limitation on the scope of paragraph (1) the undertaker may use any street or public right of way temporarily stopped up and lying within the Order limits as a temporary working site under the powers conferred by this article.

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

(4) The street specified in columns (1) and (2) of Part 1 of Schedule 5 (streets to be stopped up temporarily) is not to be wholly or partly stopped up under this article to the extent specified, by reference to the letters and numbers shown on the permanent and temporary stopping up and diversion plan, in column (3) of that Schedule, unless the temporary alternative route to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use.

(5) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up the public rights of way described in Part 2 of Schedule 5 to the extent specified in column (3) of that part of that Schedule.

- (6) The undertaker may not temporarily stop up, alter, divert or use as a temporary working site—
- (a) any street or public right of way specified as mentioned in Schedule 3 (streets subject to street works) or paragraphs (4) or (5) without first consulting the street authority; and
  - (b) any other street or public right of way without the consent of the street authority which may attach reasonable conditions to any consent.

(7) Any person who suffers loss by the suspension of any private right of way or private means of access 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.

### **Bridleways, cycle tracks and footpaths**

**16.—**(1) The public right of way specified in columns (1) and (2) of Part 1 of Schedule 6 (bridleways, cycle tracks and footpaths) and all private rights of way (if any) over that route are stopped up to the extent specified in column (3) of that Part of that Schedule.

(2) With effect from the date of the coming into force of this Order the section of footpath specified in column (4) of Part 1 of Schedule 6 is created.

(3) Unless otherwise agreed with the relevant planning authorities, the new public rights of way set out in Part 2 of Schedule 6 and identified on the new highways plans are to be constructed by the undertaker in the specified locations and open for use from the date that part of the authorised development consisting of the new railway is first open for use.

### **Access to works**

**17.** The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 7 (access to works) and shown on the compounds, haul roads and access to works plan; and
- (b) with the approval of the relevant planning authority after consultation with the relevant highway authority, form and lay out such other 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.

### **Agreements with street authorities**

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

- (a) the construction of any new street, including any structure carrying the street over or under a railway authorised by the Order;
  - (b) the strengthening, improvement, repair or reconstruction of any street under the powers of this Order;
  - (c) the maintenance of the structure of any bridge or tunnel carrying a street over or under any authorised railway;
  - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
  - (e) the carrying out in the street of any of the works referred to in article 13(1) (street works and power to alter the layout etc. of streets);
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and the street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

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

**19.**—(1) Any street to be constructed under this Order must be completed to the reasonable satisfaction of the street authority and unless otherwise agreed with the street authority, must be maintained by and at the expense of the undertaker for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street 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, unless otherwise agreed with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street authority.

(3) The date of completion of any works referred to in paragraphs (1) and (2) is to be agreed between the undertaker and the street authority, acting reasonably.

### **Closure of level crossings and crossings over disused railway**

**20.**—(1) Subject to paragraph (3), the crossing specified in columns (1) and (2) of Part 1 of Schedule 8 (closure of crossings) is to be permanently stopped up and discontinued.

(2) Subject to paragraph (3), upon the stopping up and discontinuance of any crossing referred to in paragraph (1), all public or private rights of way (if any) over the part of the crossing specified in relation to it in column (3) of Part 1 of Schedule 8 are extinguished.

(3) Paragraphs (1) and (2) are not to take effect with respect to the permanent stopping up and discontinuance of the crossing specified in columns (1), (2) and (3) of Part 1 of Schedule 8 until the replacement specified in relation to it in column (4) of that Part of that Schedule has been constructed and completed to the reasonable satisfaction of the street authority and is open for use.

(4) The crossings specified in columns (1) and (2) of Part 2 of Schedule 8 are permanently stopped up and discontinued to the extent specified in column (3) of that Part of that Schedule.

(5) Upon the permanent closure of each of the crossings referred to in paragraph (4), all public or private rights of way (if any) over the part of the crossings specified in relation to it in column (3) of Part 2 of Schedule 8 are extinguished.

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

(7) In this article and in Schedule 8 “crossing” includes a level crossing, a former level crossing and a permissive crossing of the railway or disused railway.

### **Accommodation and occupation crossings**

**21.**—(1) Subject to paragraph (2) and regardless of anything in section 68 (accommodation works by Company) of the Railways Clauses Consolidation Act 1845 as incorporated in the Portishead Railway Acts or any other enactment or instrument, all public or private rights of way (if any) afforded by means of the accommodation or occupation facilities specified in columns (1) and (2) of Parts 1 and 2 of Schedule 9 (accommodation and occupation crossings), including those specified in column (3) of Parts 1 and 2 of that Schedule, are extinguished.

(2) Paragraph (1) does not take effect with respect to the extinguishment of the public or private rights of way (if any) by means of a facility specified in columns (1) and (2) of Part 1 of Schedule 9 until the works specified in relation to it in column (4) of Part 1 of that Schedule have been provided.

(3) Paragraph (1) takes effect with respect to the extinguishment of the public or private rights of way (if any) specified in column (3) of Part 2 of Schedule 9 on the date this order comes into force.

(4) Any person who suffers loss by the extinguishment of any private 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.

## PART 4

### Supplemental powers

#### Discharge of water

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

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991<sup>(35)</sup>.

(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 pursuant to 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 under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016<sup>(36)</sup>.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(37)</sup> have the same meaning as in that Act.

#### Authority to survey and investigate land

**23.**—(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—

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<sup>(35)</sup> 1991 c. 56. Section 106 was amended by section 35(1) and (8) and section 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2016 (c. 29).

<sup>(36)</sup> S.I. 2016/1154.

<sup>(37)</sup> 1991 c. 57.

- (a) survey or investigate the land;
  - (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
  - (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
  - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required, before or after entering the land produce written evidence of their authority to do so; and
  - (b) may take 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 may be made under this article—
- (a) in land located within the highway boundary without the consent of the relevant highway authority; or
  - (b) in a private street without the consent of the street authority.
- (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 powers conferred by this article, such compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

## PART 5

### Powers of acquisition

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

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

(2) This article is subject to paragraph (3) of article 27 (compulsory acquisition of rights or imposition of covenants), article 31 (acquisition of subsoil or airspace only) and paragraph (8) of article 33 (temporary use of land for carrying out the authorised development).

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

**25.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125(38) (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(39) (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 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period

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(38) Section 125 was amended by Schedule 16 to the Housing and Planning Act 2016 (c. 22).

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



mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily or take land temporarily) of the Portishead Branch Line (MetroWest Phase 1) Order 2022”.

(3) In section 11A(40) (powers of entry: further notices 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 26 of the Portishead Branch Line (MetroWest Phase 1) Order 2022”.

(5) In Schedule 2A(41) (counter-notice requiring purchase of land not in notice to treat)—

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

“(2) But see article 31(3) (acquisition of subsoil or airspace only) of the Portishead Branch Line (MetroWest Phase 1) Order 2022, which excludes the acquisition of subsoil or airspace only from this Schedule”; and

(b) after paragraph 29, insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development) of the Portishead Branch Line (MetroWest Phase 1) Order 2022.”.

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

**26.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

(a) no notice to treat may be served under Part 1 of the 1965 Act; and

(b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act(42) as applied by article 30 (application of the 1981 Act).

(2) The authority conferred by article 33 (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.

### **Compulsory acquisition of rights or imposition of covenants**

**27.**—(1) Subject to paragraphs (3) and (4), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) The undertaker may impose restrictive covenants affecting any part of the Order land which—

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

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

(42) Section 4 was amended by sections 184, 185 and 199(2) of, and paragraphs 1 and 2 of Part 1 of Schedule 13 to, the Housing and Planning Act 2016.

- (a) adjoins or will, on completion of the authorised railway works, adjoin Work Nos. 1, 1A, 1B or 1C or as may be required for the purpose of protecting the authorised railway works; or
- (b) is required for the purposes of ecological or other mitigation.

(3) In the case of the Order land specified in column (1) of Schedule 10 (land in which new rights, etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights in the land for the purpose specified in relation to that land in column (2) of that Schedule or the imposition of restrictive covenants in accordance with paragraph (2).

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants)) where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 11 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 or the imposition of a restrictive covenant.

(6) In any case where the acquisition of new rights under paragraph (1) or the imposition of a restriction under paragraph (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, then the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights or impose such restrictions to the relevant statutory undertaker.

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

(8) Where any power is transferred to a statutory undertaker in accordance with a transfer under paragraph (6) and the statutory undertaker—

- (a) is liable to pay compensation for the exercise of that power; and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

### **Private rights over land subject to compulsory acquisition or temporary possession**

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

- (a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the undertaker under section 11(1)(43) (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 or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

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(43) Section 11(1) was amended by Schedule 4 to the Acquisition of Land Act 1981 (c. 67) and section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1) and section 186(1) and (2) of the Housing and Planning Act 2016 (c. 22),

(b) on the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act, whichever is the earlier.

(3) 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.

(4) Any person who suffers loss by the extinguishment or suspension of any private right 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.

(5) This article does not apply in relation to any right to which section 138(44) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 37 (statutory undertakers and electronic communications code network operators) applies.

(6) Paragraphs (1) to (3) 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 or the imposition of restrictive covenants over or affecting the land;
- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it,

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

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

(7) If any such agreement as is referred to in paragraph (6)(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.

(8) References in this article to private rights over land include any right of way, 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.

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

**29.**—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

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

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

(2) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or Network Rail or by any person authorised by them) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

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

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the use of the land arising by virtue of a contract.

(3) The interests and rights to which this article applies include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and includes restrictions as to the use of land arising by virtue of a contract.

- (4) Where an interest, right or restriction is overridden by paragraphs (1) or (2) compensation—
- (a) is payable under section 10(45) (further provision as to compensation for injurious affection) of the 1965 Act as applied by section 152(46) (compensation in cases where no right to claim in nuisance) of the 2008 Act; and
  - (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
    - (i) the compensation is to be estimated in connection with a purchase under that Act; or
    - (ii) the injury arises from the execution of works on or use of land acquired under that Act.
- (5) Where a relevant person—
- (a) is liable to pay compensation by virtue of paragraph (4); and
  - (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraphs (1) or (2) of this article.

(7) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 37 (statutory undertakers and electronic communications code network operators) applies.

- (8) In this article—
- “authorised activity” means—
- (a) the erection, construction or maintenance of any part of the authorised development;
  - (b) the exercise of any power authorised by this Order; or
  - (c) the use of any Order land (including the temporary use of land) for the purposes of the authorised development; and
- “relevant person” means—
- (a) a person deriving title under the undertaker;
  - (b) Network Rail; or
  - (c) a person deriving title under Network Rail.

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

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

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

(3) In section 5(2)(47) (earliest date for execution of declaration) omit the words from “, and this subsection” to the end.

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

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

(47) Section 5 was amended by section 183 of, and Schedule 15 to, the Housing and Planning Act 2016 (c. 22).

(4) Omit section 5A(48) (time limit for general vesting declaration).

(5) In section 5B(1)(49) (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 five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily or take land temporarily) of the Portishead Branch Line (MetroWest Phase 1) Order 2022”.

(6) In section 6(1)(b)(50) (notices after execution of declaration) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(7) In section 7(1)(a)(51) (constructive notice to treat) omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) In Schedule A1(52) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 31(3) (acquisition of subsoil or airspace only) of the Portishead Branch Line (MetroWest Phase 1) Order 2022, which excludes the acquisition of subsoil or airspace only from this Schedule.”.

(9) 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 (and 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**

**31.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in article 24(1) (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.

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by article 25 (modification of Part 1 of the 1965 Act);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A)(53) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

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(48) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

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

(50) Section 6 was amended by section 183 of, and paragraphs 4 and 7 of Schedule 15 to, the Housing and Planning Act 2016 and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

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

(52) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.

(53) Section 153(4A) was inserted by section 200(2) of the Housing and Planning Act 2016 (c. 22).

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

**32.**—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for the purposes of 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 by the exercise of that power, is 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 of 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**

**33.**—(1) The undertaker may, in connection with the carrying out of the authorised development but subject to article 26(1) (time limit for exercise of authority to acquire land compulsorily or take land temporarily)—

- (a) enter on and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 12 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11(**54**) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights or the imposition of covenants) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), security fencing and buildings on that land;
- (d) construct any works as are mentioned in Schedule 1 (authorised development);
- (e) carry out any other mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works on that land; or
- (f) provide any temporary car parking or storage facilities on that land.

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(54) Section 11 was amended by Schedule 4 to the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), section 186(1) and (2), section 187(1) and (2), section 188 and section 190 of, and paragraphs 2 and 3 of Schedule 16 to, the Housing and Planning Act 2016 and S.I. 2009/1307.

(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)(i).

(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 12; 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, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(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 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 statutory undertakers' apparatus or connections to such apparatus or any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (d) remove any mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works which have been placed on the land to
  - (i) facilitate construction of the authorised development;
  - (ii) protect any existing operational railway; or
  - (iii) mitigate the effects of 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) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker must not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from acquiring any part of the subsoil of or airspace over (or rights in the subsoil or of airspace over) that land under article 31 (acquisition of subsoil or airspace only).

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

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

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

- (a) enter upon and take temporary possession of any Order land 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) Unless paragraph (4) applies, the undertaker must serve notice of the intended entry on the owners and occupiers of the land not less than 28 days before entering upon and taking temporary possession of land under this article and that notice must state the purpose for which the undertaker intends to take possession of the land including the particulars of the part of the authorised development for which possession is to be taken.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of one or more of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such notice (if any) as is reasonably practicable in the circumstances.

(5) The undertaker must 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.

(6) 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.

(7) 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.

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

(9) Without affecting article 41 (no double recovery), 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 (7).

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

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(55) Section 13 was amended by sections 62(3) and 139(4) to (9) and section 62(3) of, paragraphs 27 and 28(1) and (3) of Schedule 13 to, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).



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

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

### **Disregard of certain interests and improvements**

**35.**—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1), “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

### **Set-off for enhancement in value of retained land**

**36.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil), or the imposition of restrictive covenants, under article 27 (compulsory acquisition of rights or imposition of covenants), the tribunal must set off against the value of the rights so acquired or restrictive covenants so imposed—

- (a) any increase in value of the land over which the new rights are acquired or restrictive covenants are imposed; and
- (b) any increase in the value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

### **Statutory undertakers and electronic communications code network operators**

**37.**—(1) Subject to Schedule 16 (protective provisions) and paragraph (2), the undertaker may—

- (a) exercise the powers conferred by articles 24 (compulsory acquisition of land) and 27 (compulsory acquisition of rights or imposition of covenants) in relation to so much of the Order land as belongs to statutory undertakers; and
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within 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; or
- (b) article 42 (apparatus and rights of statutory undertakers in stopped up streets).

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

**38.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 37 (statutory undertakers and electronic communications code network operators) 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 37, 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 sewage disposal plant.

(3) In this article—

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

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

## **PART 6**

### **Operations**

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

**39.**—(1) Network Rail may operate and use the railway authorised by this Order as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993(56).

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

**40.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

## PART 7

### Miscellaneous and general

#### **No double recovery**

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

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

**42.**—(1) Where a street is stopped up under articles 14 (permanent stopping up of streets) or 15 (temporary stopping up of streets and 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 permanently stopped up under article 14 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—

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

“statutory utility” means a statutory undertaker for the purposes of the 1990 Act or a public communications provider as defined in section 151(1) (interpretation of Chapter 1) of the 2003 Act.

### **Felling or lopping of trees**

**43.**—(1) The undertaker may fell, prune, coppice, pollard, reduce in height or width 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) subject to paragraph (4), 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 passengers or other persons using the authorised development.

(2) The powers in paragraph (1) may be exercised in relation to any tree or shrub which is situated within a conservation area (designated under section 69 (designation of conservation areas) of the Planning (Listed Buildings and Conservation Areas) Act 1990)<sup>(57)</sup>.

(3) Action may not be taken under paragraph (2) unless the undertaker has given written notice to the relevant planning authority of the intended action (with sufficient particulars to identify the tree), and either—

- (a) the relevant planning authority has indicated in writing that it has no objection to the works or that they fall within an exemption in paragraph (4) or (5), or
- (b) six weeks have elapsed from the date of the notice and a tree preservation order has not been made in respect of the tree or shrub.

(4) Paragraph (3) does not apply where consent would not be needed for the proposed action if the tree or shrub were subject to a tree preservation order.

(5) Paragraph (3) does not apply to any action which would be exempt in accordance with regulations under section 212 (power to disapply s. 211) of the 1990 Act.

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(57) 1990 c. 9.

(6) The duty contained in section 213(1) (enforcement of controls as respects trees in conservation areas) of the 1990 Act does not apply to the undertaker in carrying out any activity authorised by paragraphs (2) and (3).

(7) The authority given by paragraphs (2) and (3) constitutes an authorisation by an order granting development consent for the purposes of section 211(1A) of the 1990 Act.

(8) In carrying out any activity authorised by paragraph (1) or paragraphs (2) and (3), the undertaker must not unnecessarily damage any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(9) Any dispute as to a person's entitlement to compensation under this article, or as to the amount of compensation, must be determined as if it were a dispute under Part 1 of the 1961 Act.

(10) The undertaker must not exercise the powers under paragraph (2) of this article after completion of construction of the authorised development.

(11) Nothing in paragraph (1)(a) authorises works to any tree or shrub within the Avon Gorge Woodlands SAC in contravention of the Avon Gorge Vegetation Management Plan.

## **Hedgerows**

**44.**—(1) The undertaker may, for the purposes of the authorised development—

- (a) subject to requirement 6 of Schedule 2 (landscaping scheme – disused railway) and paragraph (2), remove those hedgerows specified in Part 1 (hedgerows to be removed) of Schedule 13;
- (b) remove any other hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development where it is demonstrated by the undertaker to the relevant planning authority, and the relevant planning authority certifies accordingly, that the removal of the hedgerow would not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.; and
- (c) remove the important hedgerow within the Order limits and specified in Part 2 (important hedgerow) of Schedule 13.

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

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

(4) In this article “hedgerow” means a hedgerow to which the Hedgerows Regulations 1997<sup>(58)</sup> apply and “important hedgerow” means an important hedgerow for the purposes of those Regulations.

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

**45.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990<sup>(59)</sup> 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 may be made, and no fine may be imposed, under section 82(2)<sup>(60)</sup> of that Act if—

- (a) the defendant shows that the nuisance—

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<sup>(58)</sup> S.I. 1997/1160.

<sup>(59)</sup> 1990 c. 43. There are amendments to section 82(1) which are not relevant to this Order.

<sup>(60)</sup> Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and section 107 of and paragraph 6(b) of Schedule 17 to, the Environment Act 1995 (c. 43).

- (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<sup>(61)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) Section 61(9) (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.

### **Traffic regulation**

**46.**—(1) Subject to the provisions of this article, the undertaker may at any time for the purposes of the construction, operation or maintenance of the authorised development permanently regulate traffic as described in Schedule 14 (traffic regulation), in the manner specified in column (3) on those roads specified in column (1) and along the lengths and between the points specified, or to the extent otherwise described in column (2) of that Schedule.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to the opening of the authorised development for use—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) 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 undertaker must not exercise the powers in paragraph (1) unless it has—

- (a) given not less than 12 weeks' notice in writing of its intention to do so 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 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(4) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (2)—

- (a) has effect as if duly made by, as the case may be—

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<sup>(61)</sup> 1974 c. 40. Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55). Section 61(9) was amended by Schedule 24 to the Environment Act 1995 (c. 25) and section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to section 61 which are not relevant to this Order.

- (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(62) (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 (in addition to those mentioned in Schedule 14) 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(63).
- (5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) at any time.
- (6) Before exercising the powers conferred by paragraph (2) the undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated.
- (7) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

#### **Application of the Land Compensation Act 1973**

- 47.—(1) Any regulations made by the Secretary of State under sections 20 (soundproofing of buildings affected by public works) and 20A (power to make payments in respect of caravans and other structures affected by noise of public works) of the Land Compensation Act 1973(64) which apply to a railway provided or used in the exercise of statutory powers apply to the railway comprised in the authorised development as if that railway was provided or used in the exercise of statutory powers.
- (2) Section 28 (power to pay expenses of persons moving temporarily during construction works etc.) of the Land Compensation Act 1973 has effect as if any works comprised in the authorised development were public works for the purposes of that section.

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

- 48.—(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—

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(62) 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.

(63) 2004 c. 18.

(64) 1973 c. 26. Section 20 was amended by section 146(6) and (12) of, and Schedule 13 to, the 1984 Act. Subsection (10) of section 20(10) was repealed by section 343(3) of, and Schedule 25 to, the 1980 Act and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c. 42). Section 20A was inserted by paragraph 5 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34).

- (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.

### **Procedure in relation to further approvals, etc.**

**49.**—(1) Where any application is made to a relevant authority, the consent, agreement, certification or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application 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 received, the relevant authority is deemed to have given its consent, agreement, certification or approval, as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) If before this Order comes into force the undertaker or any other person has taken any step in relation to an application to which this article applies, that step may be taken into account to determine whether the consent, agreement, certification or approval concerned should be granted provided that step would have been a valid step for the purpose of the application if it had been taken after this Order came into force.

(5) Where any application is made to a relevant authority and the application includes submissions relating to the discharge of an obligation under Part 3 of Schedule 16 (protective provisions) at the same time, paragraph (2) does not apply to that application.

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

(7) In this article—

“application” means an application or request for any consent, agreement, certification or approval required or contemplated by articles 13 (street works and power to alter the layout etc. of streets), 15 (temporary stopping up of streets and public rights of way), 17 (access to works), 19 (construction and maintenance of new or altered streets), 22 (discharge of water), 23 (authority to survey and investigate land) and 46 (traffic regulation); and

“relevant authority” means the owner of a watercourse, public sewer or drain, a local authority, a traffic authority, a highway authority or a street authority.

### **Service of notices**

**50.**—(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(65) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—
- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
  - (b) in any other case, the last known address of that person at the time of service.
- (4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of 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 may 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 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
  - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.
- (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.

### **Crown rights**

**51.**—(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 licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (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.

### **Amendment of local byelaws**

**52.**—(1) The local byelaws specified in Schedule 15 (amendment of local legislation) are hereby excluded and do not apply insofar as they are inconsistent with a provision of, or a power conferred by, this Order.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of the power;
- (b) action taken in pursuance of the power would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken;
- (c) action taken in pursuance of a power or duty under the provision would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;
- (b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and
- (c) the extent of that exclusion.

### **Protective provisions**

**53.** Schedule 16 (protective provisions) has effect.

### **Special category land**

**54.**—(1) On the exercise by the undertaker of the relevant Order power, the cycle track special category land is to vest in the undertaker and be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article—

“the relevant Order power” means the powers exercisable over the cycle track special category land by the undertaker under article 24 (compulsory acquisition of land);

“the cycle track special category land” means the land numbered 01/213 and 01/223 in the book of reference and on the land plan and forming part of an open space which may be acquired compulsorily under this Order.

### **Documents to be certified**

**55.**—(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 17 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 17 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 is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(4) The undertaker must, following certification of the plans and documents in accordance with paragraph (1), make those plans and documents available in electronic form for inspection by members of the public.

### **Arbitration**

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

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

14th November 2022

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## SCHEDULES

### SCHEDULE 1

Article 2

#### Authorised development

A nationally significant infrastructure project as defined in sections 14 and 25 of the 2008 Act comprising—

#### **In the district of North Somerset:**

**Work No. 1** – a railway of 2,264 metres in length shown on sheets 1, 1A, 2, and 3 of the works plans commencing at a point 96 metres north of the junction of Quays Avenue and Galingale Way, Portishead, using the track bed of the disused Portishead Branch Line railway, and terminating at a point 57 metres to the east of the bridge carrying Station Road (Portbury) over the disused Portishead Branch Line railway;

**Work No. 1A** – a railway of 2,498 metres in length shown on sheets 3, 4, 5 and 6 of the works plans commencing at a junction with the termination of Work No. 1 at a point 57 metres to the east of the bridge carrying Station Road (Portbury) over the disused Portishead Branch Line railway, using the track bed of the disused Portishead Branch Line railway and terminating at a point 49 metres to the west of the bridge carrying the Parson Street to Royal Portbury Dock railway over public footpath LA8/5/40 between Avon Road and Lodway Close, Pill;

**Work No. 1B** – a railway of 796 metres in length shown on sheets 6 and 7 of the works plans commencing at a junction with the termination of Work No. 1A at a point 49 metres west of the bridge carrying the Parson Street to Royal Portbury Dock railway over public footpath LA8/5/40 between Avon Road and Lodway Close, Pill and terminating at a junction with Work No. 1C, at a point 86 metres to the north of the junction of the highways of Ham Green and Westward Drive, Pill; and

**Work No. 1C** – a realignment of existing railway for a distance of 1,003 metres in length shown on sheets 6 and 7 of the works plans, commencing at a point 262 metres north west of the bridge carrying that railway over public footpath LA8/5/40 between Avon Road and Lodway Close, Pill then terminating at a new junction with the Parson Street to Royal Portbury Dock railway, at a point 86 metres to the north of the junction of the highways of Ham Green and Westward Drive, Pill, being part of the existing railway between Parson Street and Royal Portbury Dock.

Associated development within the meaning of section 115(2)(66) (development for which development consent may be granted) of the 2008 Act and within the Order limits comprising—

#### **In the district of North Somerset:**

**Work No. 2** – diversion of the highway of Quays Avenue, Portishead, of 181 metres in length, shown on sheets 1 and 1A of the works plans, from the junction of Quays Avenue and Galingale Way to a point west of the existing gyratory junction of Quays Avenue, Harbour Road and Phoenix Way, Portishead, together with connections to existing highways, widening of the southern footway of Harbour Road, landscaping, new bus waiting facilities, signage, lighting, pedestrian crossing facilities, pipes, drains, cables, ducts, troughs, telecommunications apparatus, conduits and apparatus for utilities as well as footways, and a connection to the pedestrian and cycle track forming part of Work No. 4;

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(66) Section 115(2) was amended by section 160(3) of the Housing and Planning Act 2016 (c. 22).

**Work No. 2A** – surface water drain, of 27 metres in length, shown on sheets 1 and 1A of the works plans north from Phoenix Way, Portishead into the watercourse known as the Cut;

**Work No. 3** – a foot and cycle track, of 63 metres in length, shown on sheet 1 of the works plans, commencing at a junction with Work No. 4 east of the watercourse known as the Portbury Ditch, to a point west of Portbury Ditch, together with associated landscaping, signage, fencing, lighting, cables, ducts, troughs, telecommunication apparatus, conduits and apparatus for utilities;

**Work No. 4** – a car park of 4,841 square metres in area, foot and cycle track of 275 metres in length and a new vehicular access to the highway of Harbour Road, shown on sheets 1 and 1A of the works plans, south of Harbour Road, Portishead and east of the Portbury Ditch, together with landscaping, lighting, signage, fencing, drainage in to the adjacent Portbury Ditch, to the west of Quays Avenue, Portishead;

**Work No. 5** – railway station, of 396 square metres in area, shown on sheets 1 and 1A of the works plans, to the south of Phoenix Way, Portishead, comprising platform, shelter, office, waiting area, storage and refuse area, seating, ticket vending machine, closed circuit television equipment, passenger help point, toilets, utilities connections, telecommunications equipment, public address system, information boards and displays, signage, lighting columns, fencing, acoustic barrier, landscaping, railway communications mast and surface water drain in to the adjacent watercourse known as the Cut;

**Work No. 6** – car park, of 4,419 square metres in area, shown on sheets 1 and 1A of the works plans, to the south of Phoenix Way, Portishead, including mobility impaired spaces, drainage, lighting, fencing, landscaping, signage, cycle parking facilities and utilities apparatus, together with access from the highway of Phoenix Way;

**Work No. 7A** – public foot and cycle track, of 273 metres in length, shown on sheets 1 and 1A of the works plans, from Phoenix Way, Portishead, to the south of Tansy Lane and north of Work No. 1, together with signage, drainage, lighting, fencing and landscaping;

**Work No. 7B** – public foot and cycle track, of 150 metres in length, shown on sheets 1 and 1A of the works plans, from the diverted Quays Avenue, Portishead, to the north of Galingale Way and to the south of Work No. 1, together with signage, drainage, lighting, fencing and landscaping;

**Work No. 7C** – not used;

**Work No. 7D** – temporary construction compound, of 2,876 square metres in area, shown on sheet 1 of the works plans, to the south of Tansy Lane, Portishead and to the north of Work No. 1;

**Work No. 8** – temporary construction haul road of 486 metres in length, shown on sheets 1 and 2 of the works plans, to the south of, and parallel to, Work No. 1, from a point south of Fennel Road, Portishead, to the highway known as Sheepway, Portbury;

**Work No. 9** – permanent vehicular compound of 1,862 square metres in area, road/rail vehicle access point and access road from the highway of Sheepway, shown on sheet 2 of the works plans, to the north-west of the bridge carrying the highway of Sheepway over Work No.1, a permanent diversion of the existing permissive cycle path and works to the existing car parking area to the north-west of Sheepway, together with fencing, drainage, communications apparatus, ducts, troughs, utilities apparatus, hardstanding and means of access to the highway of Sheepway;

**Work No. 10** – temporary diversion of the existing permissive cycle path, of 156 metres in length, shown on sheet 2 of the works plans, on the north west side of the highway of Sheepway, opposite Shipway Gate Farm, Portbury;

**Work No. 10A** – temporary construction compound of 2,179 square metres in area shown on sheet 2 of the works plans, to the north-west of the highway of Sheepway opposite Shipway Gate Farm, Portbury;

**Work No 10B** – temporary construction haul road to the north of the highway of Sheepway of 125 metres in length shown on sheet 2 of the works plans opposite Shipway Gate Farm, Portbury;

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**Work No. 11** – improvements to the existing agricultural access from Shipway Gate Farm, Portbury to the highway of Sheepway, shown on sheet 2 of the works plans, south of the disused Portishead Branch Line railway, including hardstanding, gate and visibility splays;

**Work No. 11A** – temporary construction haul road, of 590 metres in length, shown on sheet 2 of the works plans, east from the highway of Sheepway, to the south of and parallel to the disused Portishead Branch Line railway to Work No. 12A together with temporary field accesses and hardstanding;

**Work No. 11B** – temporary construction haul road of 269 metres in length shown on sheet 2 of the works plans, to the south of the highway of Sheepway at Shipway Gate Farm, Portbury, together with temporary field accesses and hardstanding;

**Work No. 12** – permanent vehicular access to the A369 classified road known as Portbury Hundred, shown on sheet 3 of the works plans, including hardstanding, gate and visibility splays;

**Work No. 12A** – temporary construction compound of 113,467 square metres in area, shown on sheets 2, 2B and 3 of the works plans, to the north of the A369 classified road known as Portbury Hundred and to the south of the disused Portishead Branch Line railway;

**Work No. 13** – improvement of the existing access and parking area, shown on sheet 4 of the works plans, at The Drove, Portbury, to the north of the A369 classified road known as Portbury Hundred, including hardstanding and gates;

**Work No. 13A** – temporary vehicle turning space of 575.6 square metres in area, shown on sheet 4 of the works plans, south of the disused Portishead Branch Line railway, Portbury;

**Work No. 14** – improvement to bridleway LA15/21/20, shown on sheet 4 of the works plans, at its junction with the highway of Royal Portbury Dock Road, Portbury;

**Work No. 14A** – improvement to bridleway LA8/66/10, shown on sheet 4 of the works plans, at its junction with the highway of Royal Portbury Dock Road, Portbury;

**Work No. 14B** – realignment of the existing permissive cycling route of 144.36 metres in length, shown on sheet 4 of the works plans, under Royal Portbury Dock Road, Portbury;

**Work No. 15** – temporary path of 11 metres in length to connect bridleway LA8/66/10 with the highway of Marsh Lane, shown on sheet 5 of the works plans, on the western side of Marsh Lane, Easton in Gordano, and north of the disused Portishead Branch Line railway;

**Work No. 16** – realignment of the existing permissive cycling route, shown on sheet 5 of the works plans, of 90.35 metres in length parallel to the disused Portishead Branch Line railway passing under the highway of Marsh Lane, Easton in Gordano, and connecting with bridleway LA8/67/10;

**Work No. 16A** – temporary construction compound of 7,509 square metres in area shown on sheet 5 of the works plans, beneath the Avonmouth Bridge of the M5 Special Road, Easton in Gordano;

**Work No. 16B** – not used;

**Work No. 16C** – road rail access point shown on sheet 5 of the works plans, west of the Avonmouth Bridge of the M5 Special Road, Easton in Gordano;

**Work No. 17** – temporary construction compound of 89,293 square metres in area shown on sheets 5 and 6 of the works plans, at Lodway Farm, Pill, together with access to the highway of the Breaches, Easton in Gordano;

**Work No. 17A** – temporary construction haul road, of 1,078.35 metres in area shown on sheet 6 of the works plans between Work No. 17 and footpath LA8/5/40, Pill;

**Work No. 18** – bridleway of 211 metres in length shown on sheet 5 of the works plans, commencing at a point to the west of the M5 Special Road and passing under the Avonmouth Bridge of the M5 to join National Cycle Way Network Route 41 between the Avonmouth Bridge of the M5 Special Road and Pill;

**Work No. 19** – installation of new and alteration of existing railway signal equipment, troughs and cables, as shown on sheets 5 and 6 of the works plans, on the Bristol Port Company’s railway from Portbury Junction and a new railway signal at the Bristol Port Company’s Royal Portbury Dock;

**Work No. 20** – temporary diversion of part of National Cycle Network Route 41 of 83 metres in length shown on sheet 6 of the works plans, north from its existing alignment on the street north of the Parson Street to Royal Portbury Dock railway, west of Avon Road, Pill to connect with the western turning head of Avon Road, Pill;

**Work No. 20A** – demolition of existing bridge carrying the Parson Street to Royal Portbury Dock railway over footpath LA8/5/40 and construction of new bridge and abutments, shown on sheet 6 of the works plans, south of Avon Road Pill and north of Lodway Close, Pill;

**Work No. 20B** – demolition of existing garages and temporary construction compound of 1,990 square metres in area, as shown on sheet 6 of the works plans, at Avon Road, Pill;

**Work No. 21** – car park of 2,004 square metres in area, as shown on sheet 6 of the works plans, to the south of Severn Road and Monmouth Road, Pill, including landscaping, accesses to highway, drainage and attenuation tanks, signage, lighting, fencing, drainage, ducts, troughs, communications apparatus and utilities apparatus;

**Work No. 21A** – road/rail access point, permanent railway maintenance compound of 820 square metres in area and principal supply point building, as shown on sheet 6 of the works plans, south of Severn Road, Pill, including landscaping, lighting, fencing, drainage, ducts, troughs, communications apparatus, utilities apparatus and associated access;

**Work No. 22** – railway station, shown on sheet 6 of the works plans, comprising platform, ramp, signage, seating, ticket vending machine, closed circuit television equipment, demolition of No. 7 Station Road, passenger help point, information boards and displays, passenger refuge area, car park drop off point (including mobility impaired spaces) and cycle parking facilities, lighting, fencing, landscaping, ground strengthening and stability works, communications apparatus, drainage and utilities apparatus, to the north west of Station Road, Pill;

**Work No. 22A** – improved bus waiting facility, shown on sheet 6 of the works plans, on the highways of Lodway and Heywood Road, Pill, north of the Pill Memorial Club, Pill, together with retaining wall, lighting, drainage and alteration of utilities apparatus;

**Work No. 22B** – temporary construction compound of 1,067 square metres in area shown on sheet 6 of the works plans, within the car park of Pill Memorial Club, Lodway, Pill;

**Work No. 23** – temporary construction compound of 151 square metres in area, as shown on sheet 6 of the works plans, beneath and to the north of Pill Viaduct, Underbanks, Pill;

**Work No. 24** – permanent vehicular compound of 2,011 square metres in area, shown on sheet 8 of the works plans, south of Ham Green Lake, together with a road rail vehicle access point, permanent access south from the highway of Chapel Pill Lane to the compound and new fencing, lighting, landscaping, utilities connections, laying of electricity, water, drainage and communications conduits and apparatus together with a new access to Ham Green Lake and improvements to Chapel Pill Lane;

**Work No. 24A** – temporary construction compound of 6,653 square metres in area, shown on sheet 8 of the works plans, accessed from the highway of Chapel Pill Lane, Ham Green, Pill; and

**Work No. 25** – reconstruction of accommodation bridge known as Quarry Bridge No. 2, temporary construction compound and temporary ramp for construction access to the Parson Street to Royal Portbury Dock railway, shown on sheet 12 of the works plans.

#### **In the City and County of Bristol:**

**Work No. 26** – permanent vehicular access, ramp, flood mitigation works and railway maintenance compound, of 2,948 square metres in area shown on sheet 15 of the works plans, east of the highway of the A369 classified road known as Clanage Road, Ashton, north of the Bedminster Cricket Club;

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**Work No. 26A** – temporary construction compound of 3,346 square metres in area, shown on sheet 15 of the works plans, east of the highway of the A369 classified road known as Clanage Road, Ashton, north of the Bedminster Cricket Club,

**Work No. 26B** – permanent vehicular access to the highway of the A369 classified road known as Clanage Road, Ashton from the land to the north of the Bedminster Cricket Club, shown on sheet 15 of the works plans;

**Work No. 27** – not used;

**Work No. 28** – improvement of the highway of Winterstoke Road at its junction with Ashton Vale Road, as shown on sheet 16 of the works plans, including extension of existing left turn lane in to Ashton Vale Road, retaining wall, works to divert and install utility apparatus and installation of a new traffic signal control system, Ashton; and

**Work No. 29** – temporary construction compound of 3,176 square metres within the rail freight facility at Liberty Lane, Bristol, shown on sheet 17 of the works plans.

And in connection with such works further associated development within the Order limits consisting of—

- (a) permanent way (rail tracks) electrical equipment, power supply cubicles, cables, telecommunications apparatus, railway mobile communications masts and apparatus and signalling;
- (b) ramps, means of access (including temporary haul roads) and construction compounds;
- (c) embankments, aprons, abutments, shafts, foundations, retaining walls and structures, drainage, wing walls, fences, acoustic fences, catch fences, paths, access steps and culverts;
- (d) works to alter, divert, maintain, replace and repair apparatus (including statutory undertakers' apparatus), including mains, sewers, pipes, drains and cables or for their protection;
- (e) works to clear, maintain and interfere with water courses other than a navigable water course;
- (f) landscaping and other works (including the creation of ponds) to mitigate any adverse effects of the construction, maintenance or operation of the authorised development described in the environmental statement;
- (g) works for the benefit or protection of land affected by the authorised development;
- (h) works required for the strengthening, improvement, maintenance or reconstruction of any streets;
- (i) works to level crossings;
- (j) works for the temporary diversion of public footpaths shown in the permanent and temporary stopping up and diversion plan;
- (k) trenching and cabling associated with the new signalling and communications masts;
- (l) strengthening earthworks and reconstructing retaining walls;
- (m) vegetation clearance, rock bolting and rock dowels and safeguarding of unstable slopes or rock faces by stone-picking and removal of loose rocks;
- (n) replacement or renewal of fencing;
- (o) repairs to existing underbridges and overbridges, adding barriers to bridge parapets and raising of bridge parapets;
- (p) alteration of the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by increasing or



- reducing the width of any kerb, footway, cycle track or verge within the street, extending any footway or removing replacing, altering or providing splitter islands in streets;
- (q) works to place, alter, remove or maintain road furniture;
  - (r) works to place, alter, divert, relocate, protect, remove or maintain the position of apparatus (including statutory undertakers' apparatus), services, plant and other equipment in, under or above a street, or in other land, including mains, sewers, drains, pipes, lights, cables, cofferdams, fencing and other boundary treatments and to provide connections to adjoining land and buildings;
  - (s) landscaping, re-grading, re-profiling, contouring, noise barriers, works associated with the provision of ecological and archaeological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
  - (t) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, demolition of existing structures and the creation of alternative highways or footpaths); earthworks (including soil stripping and storage and site levelling);
  - (u) establishment of site construction compounds and working sites, temporary structures, storage areas (including storage of excavated material and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, drainage systems, temporary bridges over watercourses, storage ponds, processing plant, works and conveniences;
  - (v) pavement, kerbing and paved areas;
  - (w) signing, signals, street lighting, road markings, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
  - (x) such other works, including working sites and works compounds, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development and which do not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement.

## SCHEDULE 2

Articles 5 and 49

### Requirements

## PART 1

### Requirements

#### 1. In this Part—

“Ashton Vale Road and Winterstoke Road Highway Works Plan” means the plan to be certified as the Ashton Vale Road and Winterstoke Road highway works plan by the Secretary of State for the purposes of this Order;

“Bridleway Extension under the Elevated M5 Plan” means the plan certified as the bridleway extension under the elevated M5 plan by the Secretary of State for the purposes of this Order;

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“Cattle Creep Proposed General Arrangement drawing” means the plan certified at the Cattle Creep Proposed General Arrangement drawing by the Secretary of State for the purposes of this Order;

“Council’s archaeologist” means the chief archaeologist for the relevant planning authority;

“currently operational railway land” means any part of the existing operational national railway network owned and managed by Network Rail that is within the Order limits;

“environmental master plan” means the plans certified as the environmental master plan by the Secretary of State for the purposes of this Order;

“first commercial use” means the first use of Work Nos. 1, 1A and 1B for the carriage for fare paying passengers;

“fencing grades summary” means the summary of fencing types, based on plate 4.8 of the environmental statement and certified as the fencing grades summary by the Secretary of State for the purposes of this Order;

“general arrangement plans” means the plans certified as the general arrangement plans by the Secretary of State for the purposes of this Order;

“GSM-R mast” means Global System for Mobile Communications-Railway mast provided for the purposes of driver-signaller communications;

“habitat impacted by construction works within the Avon Gorge Woodlands SAC plan” means the plans certified as the habitat impacted by construction works within the Avon Gorge Woodlands SAC plan by the Secretary of State for the purposes of this Order;

“MOVA” means a traffic control strategy designed to maximise the operational efficiency of a highway junction or crossing by adjusting the green time required for each approach and assessing the number of vehicles approaching the signals, whilst determining the impact that queuing vehicles would have on the overall operation of the junction;

“Portbury Hundred location of additional tree planting plans” means the plans certified as such by the Secretary of State for the purposes of this Order;

“preparatory activities” means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works;

“railway landscape plans (disused line)” means the plans certified as the railway landscape plans (disused line) by the Secretary of State for the purposes of this Order; and

“stage” means one of the stages of the authorised development and such other associated development as is connected with that stage as is described in paragraph 3.

### **Time limits**

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

### **Stages of authorised development**

3.—(1) The following stages apply to the authorised development in the District of North Somerset—

- (a) Stage 1 comprises Work Nos. 1, 1A, 5, 9, 11A, 12, 13, 14, 14A, 14B and 16C, being the new railway between Portishead and Station Road, Portbury; the new railway between old Portbury Station and Portbury Junction, the new Portishead Station; works at The Drove at Portbury; a road rail access point, at Easton in Gordano; works to bridleway at Royal

Portbury Dock Road and Marsh Lane, Easton in Gordano, and flood attenuation works west of the M5 at Easton in Gordano;

- (b) Stage 1A comprises Work Nos. 7D, 8, 10, 10A, 12A, 13A, 15, 16, 16A, 17 and 17A being haul roads south of Work No. 1, cycle path diversions and compounds at Sheepway together with any use of neighbouring Order land as a temporary compound, a temporary construction compound north of the A369 at Portbury; construction haul roads; a permanent access from A369 at Portbury, temporary vehicle turning circle east of The Drove and north of the A369 Portbury Hundred, a temporary construction compound under the M5 Special Road Avonmouth Bridge; a temporary construction compound and haul road at Lodway;
- (c) Stage 1B comprises Work Nos. 20, 20B, 23 and 24A and being demolition of garages at Avon Road, Pill, temporary diversion of bridleway to the west of Avon Road, Pill, temporary compound beneath Pill Viaduct, and a temporary construction compound at Chapel Pill Lane, Ham Green together with any use of neighbouring Order land as a temporary compound;
- (d) Stage 1C comprises Work Nos. 10B and 11B, being temporary haul roads to the north and south of Shipway Gate Farm, Sheepway;
- (e) Stage 2 comprises Work Nos. 2, 2A, 3, 4, 6, and 7A-C being the diversion of Quays Avenue, Portishead, highway works at Harbour Road and Quays Avenue, Portishead; new highway drain; footpaths parallel to the disused Portishead Branch Line railway; public realm works and car parks at Portishead;
- (f) Stage 3 comprises Work No. 11, being improvements to the existing agricultural access from Shipway Gate Farm, Sheepway;
- (g) Stage 4 comprises Work Nos. 1B, 1C, 19, 20A, 21, 21A and 22 being works to the existing railway and to construct a railway between Portbury Junction and Pill Junction, installation of signalling equipment on the Bristol Port Company's railway, works to replace an underbridge to the north of Avon Road, Pill; Pill Station; car park at Pill Station and permanent maintenance compound and road rail access point;
- (h) Stage 4A comprises Work No. 18 being a bridleway from under the M5 Avonmouth Bridge to meet National Cycle Network route no. 41 on the east side of the M5 Special Road, Pill;
- (i) Stage 4B comprises Work No. 24 being a permanent maintenance access at Ham Green;
- (j) Stage 5 comprises Work Nos. 22A and 22B being modifications to an existing bus stop and temporary compound at Pill Memorial Club, Lodway; and
- (k) Stage 6 comprises Work No. 25 being the reconstruction of Quarry Bridge No. 2 and the associated temporary compound in the Avon Gorge, together with the minor works to the railway between Pill Tunnel and Clifton Overbridge,

or such other stages of the Works that are agreed in writing with the relevant planning authority.

(2) The following stages apply to the authorised development in the City and County of Bristol:

- (a) Stage 7 comprises Work Nos. 26, 26A and 26B, being a permanent road rail access point and compound, temporary construction compound at Clanage Road and new permanent access to the highway of Clanage Road, at Bower Ashton in Bristol;
- (b) Stage 8 – not used;
- (c) Stage 9 comprises Work No. 28, being works to the public highway at the junction of Winterstoke Road and Ashton Vale Road, Bristol; and
- (d) Stage 10 comprises Work No. 29 being a temporary construction compound at the rail freight facility at South Liberty Lane, Bristol,

or such other stages of the Works that are agreed in writing with the relevant planning authority.

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(3) The undertaker may submit for approval such part or parts of a stage as may be agreed with the relevant planning authority, and with the approval of the relevant planning authority carry out the approved parts of a stage without securing approval of those elements of a stage that are agreed with the relevant planning authority as remaining to be determined.

(4) Any restriction in a requirement in this Schedule that prevents a stage from commencing until details regarding that stage have been approved by the relevant planning authority does not prevent the undertaker carrying out any preparatory activities for that stage or the use of land within the Order limits as a temporary construction compound.

#### **Submission and approval of detail design**

4.—(1) Those elements of the authorised development comprising the works listed in column (1) of the table in sub-paragraph (5) must not commence until the detail design for that element has been approved by the relevant planning authority.

(2) The detail designs submitted to the relevant planning authority in accordance with paragraph (1) must reflect the principles of the relevant design drawings listed in column (3) of the table in sub-paragraph (5) unless otherwise agreed with the relevant planning authority.

(3) Any changes from the design drawings must be in accordance with the principles set out in the environmental statement.

(4) The relevant Work must be carried out in accordance with the detail designs approved by the relevant planning authority.

(5) The elements of the authorised development to which paragraph (1) applies are—

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Work No(s)</i>	<i>Description</i>	<i>Design drawing(s)</i>	<i>Relevant planning authority</i>
2, 2A, 3, 4, 6, 7A, 7B and 7D	Portishead highways and car parks	467470.BQ.04.20-100 467470.BQ.04.20-101 467470.BQ.04.20-102	North Somerset District Council
5	Portishead Station	W1097B-ARP-DRG-EAR-300001 W1097B-ARP-DRG-EST-300003 W1097B-ARP-DRG-EST-300004 W1097B-ARP-DRG-EST-300005	North Somerset District Council
9	Sheepway Compound	467470.BQ.04.20-400 467470.BQ.04.20-401	North Somerset District Council
12	Portbury Hundred Access	467470.BQ.04.20-600	North Somerset District Council

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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Work No(s)</i>	<i>Description</i>	<i>Design drawing(s)</i>	<i>Relevant planning authority</i>
13	Wessex Water Compound Access	467470.BQ.04.20-570	North Somerset District Council
14, 14A	Works to bridleways at Royal Portbury Dock Road	467470.BQ.04.20-530 Rev H	North Somerset District Council
14B, 16	Realignment of permissive cycle path at Royal Portbury Dock Road	467470.BQ.04.20-550 Rev E 467470.BQ.04.20-551 Rev E 467470.BQ.04.20-552 Rev F	North Somerset District Council
21	Pill Station – Severn Road Car Park	467470.BQ.04.20-207	North Somerset District Council
22	Pill Station and Forecourt	467470.BQ.04.20-209 W1097B-ARP-DRG-EST-300011	North Somerset District Council
22A, 22B	Bus stop on Heywood Road and Lodway, Pill at Pill Memorial Club	467470.BQ.04.20-290 467470.BQ.04.20-291	North Somerset District Council
24	Pill Tunnel Eastern Portal Compound	467470.BQ.04.20-219 Rev B 467470.BQ.04.20-220 467470.BQ.04.20-221	North Somerset District Council
26, 26B	Clanage Road Compound and replacement access	467470.BQ.04.20-621	Bristol City Council

### **Construction Environmental Management Plan etc.**

5.—(1) A stage of authorised development must not commence until the written Construction Environmental Management Plan (CEMP) for that stage has been approved by the relevant planning authority.

(2) The CEMP for a stage must be in accordance with the principles set out in the environmental statement, the Master CEMP, the COCP and the CTMP.

(3) The CEMP for a stage must, where relevant to that stage, in particular include the following—

- (a) an external communications plan;
- (b) a pollution incident prevention and control plan;
- (c) a site waste management plan;
- (d) a construction traffic management plan;

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- (e) a construction workers travel plan;
  - (f) a materials management plan;
  - (g) a plan for storage for reuse of stripped soils within land forming part of haul roads or temporary compounds;
  - (h) a construction flood plan and flood emergency preparedness plan for any construction site or compound located within undefended flood zone 2 or flood zone 3;
  - (i) a surface water management plan;
  - (j) measures for the protection of wildlife;
  - (k) a reptile and amphibian mitigation strategy; and
  - (l) nuisance management plans regarding noise and vibration, dust, air pollution and lighting.
- (4) The CTMP when required for a stage under sub-paragraph (3) must in particular and where relevant address—
- (a) construction traffic routes and operational hours;
  - (b) site accesses;
  - (c) the management of junctions to and crossings of the public highway and other public rights of way;
  - (d) the scheduling and timing of abnormal load movements;
  - (e) temporary warning signs;
  - (f) restrictions on vehicle turning movements in to and out of compounds on the A369 Portbury Hundred classified road; and
  - (g) measures to minimise dust and mud.
- (5) The relevant stage must be carried out in accordance with the COCP and the approved CEMP and CTMP for that stage.
- (6) Where a part of the authorised development—
- (a) is not within a relevant stage or associated development connected with a relevant stage; or
  - (b) does not consist of preparatory activities,
- then that part of the authorised development must be carried out in accordance with the COCP, the Master CEMP and the CTMP.

### **Landscaping scheme – disused railway**

6.—(1) Work Nos. 1 and 1A must not commence until a written landscaping scheme for those works, prepared in accordance with the principles of the railway landscape plans (disused line), has been submitted to and approved by the relevant planning authority. Work Nos. 1 and 1A must be carried out in accordance with the approved scheme or any variation to the scheme that has been approved by the relevant planning authority.

- (2) The submitted landscaping scheme must include details of—
- (a) location, number, species, size and planting density of any proposed planting;
  - (b) cultivation, importing of materials and other operations to ensure plant establishment;
  - (c) vegetation to be retained;
  - (d) implementation timetables for all landscaping; and
  - (e) proposals to take account of the presence of trees with trunks of a diameter of 100 millimetres or more and to minimize the loss of such trees.

(3) The written landscaping scheme for Work No. 1A must also contain measures to limit the impacts of the authorised development on the important hedgerow located between Work Nos. 1A and 17 and for the restoration of the important hedgerow following the cessation of use of Work No. 17.

(4) Any tree or shrub planted as part of the approved railway landscaping scheme that, within a period of five years after the date that it is planted, is removed, uprooted, destroyed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives consent to any variation.

### **Landscaping – other works**

7.—(1) All landscaping shown in principle on the design drawings must be carried out in accordance with the landscaping details shown on the relevant drawing submitted to and approved by the relevant planning authority in accordance with requirement 4. The relevant work must not commence until an implementation timetable relevant to the approved landscaping has been submitted to and approved by the relevant planning authority. The landscaping must be carried out in accordance with the approved details and the approved implementation timetable.

(2) Any tree or shrub planted as part of the approved landscaping scheme that, within a period of five years after the date that it is planted, is removed, uprooted, destroyed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives consent to any variation.

(3) This requirement does not apply to Work Nos. 1, 1A, 1B or 1C or works subject to the Avon Gorge Vegetation Management Plan.

### **Temporary fencing**

8.—(1) Prior to the commencement of a stage of the authorised development (or such part of that stage as may be agreed with the relevant planning authority) the relevant planning authority must receive for its approval a plan indicating the extent of temporary fencing that must be erected for the authorised development, together with a timetable for its installation and removal.

(2) A part of the authorised development within a stage (or such part of that stage as may be agreed with the relevant planning authority) and being an area where temporary fencing is so indicated must not commence without the temporary fencing approved by the relevant planning authority having first been erected.

(3) The approved temporary fencing must be retained and maintained to the reasonable satisfaction of the relevant planning authority until the cessation of works in that area.

(4) The fencing must be removed in accordance with the approved removal timetable to the satisfaction of the relevant planning authority.

### **Highway accesses**

9.—(1) A stage of the authorised development must not commence until details of the siting, design and layout of any new or altered, permanent or temporary, access, and any temporary haul roads for that stage have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The submitted details must also include a timetable for carrying out the relevant activities.

(2) The approved highway alterations and improvements, including any altered or new accesses and any temporary haul roads, for that stage must be implemented in accordance with the approved details and timetable.

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(3) Where the details submitted under sub-paragraph (1) include details of temporary accesses and haul roads, the submitted details for such temporary accesses and haul roads must also include details for the removal of the temporary access and haul road and restoration of the land used for such access together with a timetable for removal of the accesses and haul road upon cessation of its use for the purposes of the authorised development.

### **Archaeology**

**10.**—(1) Work Nos. 5, 9, 10, 10A, 12A, 17, 24, 24A, 26, 26A and 26B must not commence until a written scheme of investigation (WSI) for a watching brief covering any areas of archaeological interest identified by the environmental statement relevant to that work has, after consultation with the Council’s archaeologist, been submitted to and approved by the relevant planning authority.

(2) The WSI must identify areas where a watching brief is required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Where a WSI is required it must include a programme for post-investigation assessment and reporting and make provision for the publication and dissemination and for the archive deposition of the analysis and records of the site investigation as appropriate and commensurate with the archaeological material recovered.

(4) The watching brief carried out under the WSI must be carried out by a suitably qualified person or body approved by the relevant planning authority.

(5) The watching brief and post-investigation assessment and reporting must be completed in accordance with the programme set out in the approved WSI and the provision made for analysis, publication and dissemination of results and archive deposition has been secured where appropriate.

(6) In addition to the WSI required for Work No. 17, any part of Work No. 17 must not commence until details of a temporary fence to be erected to protect the linear earthworks feature reference number HER47401 as identified on the environmental master plan has, after consultation with the Council’s archaeologist, been submitted to and approved by the relevant planning authority.

(7) The fence approved pursuant to sub-paragraph (6) must be erected in accordance with the approved details and in accordance with a programme specified by the relevant planning authority and must be maintained to the reasonable satisfaction of the relevant planning authority until the land is restored following cessation of use of Work No. 17.

### **Surface and foul water drainage**

**11.**—(1) A stage of the authorised development must not commence until written details of the surface and (if any) foul water drainage system (including means of pollution control) have, after consultation with the relevant lead local flood authority and the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The approved drainage systems for the relevant stage must be constructed in accordance with the approved details and thereafter managed and maintained in accordance with the approved details for the lifetime of the authorised development unless otherwise agreed with the relevant planning authority after consultation with the relevant lead local flood authority and the Environment Agency.

(3) This requirement does not apply to currently operational railway land.

### **Trees**

**12.**—(1) A stage of the authorised development must not commence until the relevant planning authority has confirmed that it has approved in writing an arboricultural method statement for that stage prepared in accordance with BS:5837:2012 and detailing the proposed methods for protecting trees proposed to be retained, including a timetable for the installation and removal of the proposed protective measures.



(2) The plan submitted must also identify areas of tree protective fencing to be erected prior to commencement of that stage of the authorised development.

(3) The fencing shown on the approved plan must be erected in accordance with the relevant arboricultural method statement and thereafter maintained and retained in its approved position during the construction period to the reasonable satisfaction of the relevant planning authority.

(4) The protective fencing must be removed to the satisfaction of the relevant planning authority in accordance with the time period specified in the arboricultural method statement for that stage.

### **Control of invasive plants outside of Avon Gorge Woodlands SAC**

**13.**—(1) A stage of the authorised development must not commence until, after consultation with the relevant planning authority, a written scheme to prevent the spread or emanation of invasive plant species from the authorised development has been submitted to and approved in writing by the relevant planning authority.

(2) The approved scheme to prevent the spread or emanation of invasive plant species must be implemented before and maintained during the construction of the relevant stage of the authorised development.

(3) This requirement does not apply to the Avon Gorge Woodlands SAC.

### **Avon Gorge Woodlands SAC**

**14.**—(1) Any part of the authorised development within the Avon Gorge Woodlands SAC must be carried out in accordance with the Avon Gorge Vegetation Management Plan.

(2) Any part of the authorised development within the Avon Gorge Woodlands SAC consisting of—

- (a) foot accesses and steps;
- (b) GSMR masts, antennae and associated equipment boxes;
- (c) signal and associated equipment box;
- (d) catch fences;
- (e) works to retaining walls and structures; or
- (f) rock stabilization works,

must not commence before details of the location, siting and design of the relevant work, together with any required site clearance, working space and lay down areas, have been submitted to and approved by the relevant planning authority in consultation with Natural England. The details submitted for approval must be located within the areas shown for the relevant works on the general arrangement plans. The works must be carried out in accordance with the approved details.

(3) Work to remove, install or replace security fencing in the Avon Gorge Woodlands SAC must not commence before details of the location, siting, colour and design of the fencing, together with any required site clearance and working space, have been submitted to and approved by the relevant planning authority in consultation with Natural England. The details submitted for approval must be located within the areas shown for fencing in the habitat impacted by construction works within the Avon Gorge Vegetation Management Plan and any permanent security fencing to be installed must be of a nature substantially in accordance with the details set out in the relevant part of the general arrangement plans and the fencing grades summary. The works must be carried out in accordance with the approved details and the installed fencing thereafter retained unless alternative type fencing is required for railway operational safety reasons.

(4) Any temporary works within the Avon Gorge Woodlands SAC consisting of compounds or construction welfare facilities (including the temporary works that are part of Work No. 25) must

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not commence before the location, siting, duration of use and details for the removal of the relevant facility has been approved by the relevant planning authority in consultation with Natural England.

(5) The facilities described in paragraph (4) must be carried out as approved and the relevant facility must at the conclusion of the temporary works be removed to the satisfaction of the relevant planning authority in consultation with Natural England and in accordance with the approved details.

(6) The mitigation and compensation measures specified in the Avon Gorge Vegetation Management Plan must be carried out in accordance with the timetables set out in that document. The measures must thereafter be managed in accordance with the Avon Gorge Vegetation Management Plan to the satisfaction of the relevant planning authority in consultation with Natural England.

(7) The undertaker must provide monitoring reports to the relevant planning authority, Natural England and the Department for Environment, Food & Rural Affairs (Defra) no later than 12 months following first commercial use in accordance with the provisions of the Avon Gorge Vegetation Management Plan. Thereafter monitoring reports must be provided as specified in the Avon Gorge Vegetation Management Plan. In addition to the annual monitoring report to be provided to Network Rail and Natural England, the undertaker must provide a copy of that report to Defra.

#### **External lighting and control of artificial light emissions during construction**

**15.—**(1) A stage of the works (or such part of that stage as may be agreed with the relevant planning authority) must not commence until written details of any temporary external lighting to be installed in connection with the construction of that stage, including measures to prevent light spillage, have been submitted to and approved by the relevant planning authority; and any approved means of lighting must be installed in accordance with the approved details and retained for the duration of the construction period.

(2) Any means of construction lighting approved under sub-paragraph (1) must be removed on completion of the relevant stage.

#### **Construction hours**

**16.—**(1) Except for—

- (a) works on any existing highway;
- (b) works on currently operational railway land; or
- (c) activities associated with such works within the compounds authorised by this Order,

to which no restriction on working hours applies under this Order, works to construct the authorised development must not take place other than within normal daytime working hours (6.30am to 6pm Monday to Saturday) unless paragraph (2) applies.

(2) Construction work must not take place—

- (a) on Sundays, Bank or Public Holidays; or
- (b) outside the times specified in paragraph (1)

except for such working which has been notified to and approved by the relevant planning authority and communicated to affected residents by an agreed notification procedure.

(3) Nothing in this requirement prevents use of construction compounds for—

- (a) necessary preparation, before and after each shift, for items such as the management of materials and machinery;
- (b) staff briefings;
- (c) maintenance and cleaning of site welfare facilities;
- (d) stockpile management and removal of redundant material; or

(e) arrival of personnel on site and parking,  
after 6am Monday to Saturday.

### **Contaminated land and groundwater**

17.—(1) Any stage of the authorised development must not commence until a written scheme applicable to that stage to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the relevant planning authority and the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The scheme must include an investigation and assessment report (including a desk based study), prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken with respect to any contaminants on the site.

(3) The stage of the authorised development must be carried out in accordance with the approved scheme.

(4) Where the scheme sets out remedial measures to be taken with respect to any contaminants on the site, a verification plan must also be submitted providing details of the data that will be collected in order to demonstrate that the remedial measures are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

(5) If, during development, contamination not previously identified is found to be present at the site, no further development (unless otherwise agreed in writing with the relevant planning authority) is to be carried out until a remediation strategy detailing how this unsuspected contamination will be dealt with has, after consultation with the relevant planning authority and the Environment Agency, been submitted to and approved by the relevant planning authority. The remediation strategy must be implemented as approved.

(6) Paragraphs (1) to (5) do not apply to any currently operational railway land.

### **Works to Winterstoke Road, Bristol**

18.—(1) Work No. 28 (Winterstoke Road and Ashton Vale Road Junction) must not commence until the relevant planning authority, in consultation with the relevant highway authority, has approved the detail design for Work No. 28, to include—

- (a) an extended left turn lane on Winterstoke Road for vehicles in to Ashton Vale Road; and
- (b) details for the installation of a MOVA system or other traffic control measures designed to maximise the operational efficiency of the Winterstoke Road and Ashton Vale Road junction including provision for the movement of trains over the level crossing at Ashton Vale Road.

(2) The detail design required by sub-paragraph (1) to be submitted to the relevant planning authority must be in substantial accordance with the Ashton Vale Road and Winterstoke Road Highway Works Plan.

(3) Work No. 28 must be carried out in accordance with the approved details to the satisfaction of the relevant planning authority in consultation with the relevant highway authority prior to first commercial use.

### **Path at Marsh Lane, Easton in Gordano**

19.—(1) Work No. 15 must not commence until written details of the levels and surfacing of the Work have been submitted to and approved by the relevant planning authority in consultation

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with the relevant highway authority. The Work must be carried out in accordance with the approved details.

(2) Following cessation of the construction haul road between Marsh Lane and the compounds located under the M5 Avonmouth Bridge and on Lodway Farm, Work No. 15 must be removed within 6 months to the satisfaction of the relevant planning authority in consultation with the relevant highway authority.

#### **Temporary path at Avon Road, Pill**

**20.**—(1) Work No. 20 must not commence until written details of the levels and surfacing of the Work have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The Work must be carried out in accordance with the approved details prior to commencement of Work No. 20A or 20B. Work No. 20 must thereafter be retained and available for use for the duration of the use of Work No. 20B as a construction compound.

(2) Following cessation of use of Work No. 20B, Work No. 20 must be removed within 6 months to the satisfaction of the relevant planning authority.

#### **Restoration of land used temporarily for construction**

**21.**—(1) Any land within the Order limits which is used temporarily for construction of the authorised development and not ultimately used for the purposes of the permanent works or approved landscaping, must be reinstated in accordance with such details as the relevant planning authority in consultation with (if relevant) the relevant highway authority may approve, as soon as reasonably practicable and in any event within twelve months of completion of that part of the authorised development for which the land is used.

(2) Sub-paragraph (1) does not apply to any mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works to which article 33(4)(d) (temporary use of land for carrying out the authorised development) applies and which have been placed on land which is used temporarily for the authorised development.

#### **Watercourses**

**22.**—(1) Work Nos. 1 and 1A must not commence until a scheme and programme (including timescale) for works proposed to any watercourse flowing under the authorised development has been submitted to and approved in writing by the relevant planning authority in consultation with, if relevant, the relevant lead local flood authority, the Environment Agency and the IDB. The scheme submitted for approval must include details of the proposed clearance and repair works together with proposals for any temporary obstructions within the watercourse and any over pumping or other proposals for the maintenance of flow during the works.

(2) The works to a watercourse to which sub-paragraph (1) applies must be carried out and the watercourse subsequently reinstated in accordance with the approved scheme and programme.

(3) Unless otherwise permitted under sub-paragraph (1), throughout the period of construction, all watercourses must be maintained so that the flow of water is not impaired or the drainage on to and from adjoining land rendered less effective.

#### **For the protection of bats**

**23.**—(1) Work Nos. 1, 1A, 1B and 1C must not commence until written details of the proposed tree planting on the A369 Portbury Hundred classified road have been approved in writing by the relevant planning authority in consultation with the relevant highway authority and Natural England. The details submitted for approval must accord with the Portbury Hundred location of additional tree planting plans.

(2) The proposed tree planting on the A369 Portbury Hundred classified road must be carried out in accordance with the approved details to the reasonable satisfaction of the relevant planning authority in the first planting season after the details have been approved by the relevant planning authority unless the planting has already been carried out to the reasonable satisfaction of the relevant planning authority.

(3) The required planting must be maintained to the reasonable satisfaction of the relevant planning authority for five years following completion.

(4) No part of the authorised development must commence in the Avon Gorge Woodlands SAC until—

- (a) five artificial bat roosts have been installed in the locations shown on sheets 14, 17, 18 and 19 of the environmental master plan; and
- (b) a grille has been installed at the entrance to the cave known as Adit Cave 7 in the location shown on sheet 19 of the environmental master plan,

to the satisfaction of the relevant planning authority.

#### **Permanent fencing outside of Avon Gorge Woodlands SAC**

**24.**—(1) Subject to sub-paragraphs (2) and (3) and without affecting requirement 30(4), a stage of the works must not commence until written details of any permanent security fencing to be installed in connection with that stage, together with a timetable for its installation, have been submitted to and approved by the relevant planning authority.

(2) Where new fencing is to be provided that does not fall within a stage, and is outside of the Avon Gorge Woodlands SAC, any permanent security fencing to be installed must be of a nature substantially in accordance with the details set out in the general arrangement plans and the fencing grades summary.

(3) Any new permanent security fencing must be installed in accordance with the approved details and thereafter retained unless alternative type fencing is required for railway operational safety reasons.

#### **Permanent acoustic fencing**

**25.**—(1) Work Nos. 1 and 1A must not commence until written details of the proposed permanent acoustic mitigation fences to be located to the south of the proposed Portishead Station and at the disused Portbury Station at the locations shown on the general arrangement plans have been submitted to and approved by the relevant planning authority.

(2) The dimensions of the acoustic mitigation fences must be—

- (a) between 200 and 210 metres in length and 2 metres in height from track bed level for the fence to be located to the south of the proposed Portishead Station; and
- (b) between 35 and 55 metres in length and 2.4 metres in height from track bed level for the fence to be located at the former Portbury Station.

(3) The permanent acoustic fencing, or other means of enclosure, must be installed as approved prior to first commercial use of Work Nos. 1 and 1A and thereafter retained.

#### **Portishead Station and Portbury Ditch**

**26.**—(1) Work No. 5 (Portishead Station) must not commence until written details of any permanent lighting to be installed in connection with that work, including measures to minimise light spillage, have been submitted to and approved by the relevant planning authority, the authority acknowledging the necessity for the lighting to comply with Railway Industry Standards.

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(2) Work No. 5 must not commence until written details of any GSM-R mast to be located at Portishead Station have been submitted to and approved by the relevant planning authority. The GSM-R mast must not exceed 12 metres in height from the proposed track bed level of Work No. 1 at Portishead Station.

(3) Work No. 5 must not commence until written details of proposals for the inclusion of on-site energy generation to be incorporated within the detail design for Portishead Station have been submitted to and approved by the relevant planning authority.

(4) Work No. 5 must be carried out in accordance with the approved details.

(5) Work No. 3 (a foot and cycle track east of Portbury Ditch) and Work No. 5 must not commence until a Flood Risk Assessment (FRA) for those works has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency. If the FRA concludes that Work No. 3 or Work No. 5 is at risk of flooding then the FRA must include details of the agreed mitigation works, to include a flood emergency and evacuation plan, that would be required for the relevant Work and users would remain safe should a flood event occur

(6) First commercial use must not occur prior to the approval of a station travel plan for Portishead Station by the relevant planning authority. The content of the station travel plan must substantially reflect the outline station travel plan for Portishead Station submitted as part of the Environmental Statement, as Volume 4, Technical Appendices, Appendix 16.1 Transport Assessment (Part 17 of 18) – Appendix M, Outline Station Travel Plans.

### **Pill Station**

**27.**—(1) Work No. 22 (Pill Station) must not commence until written details of any permanent lighting to be installed in connection with that work, including measures to minimise light spillage, have been submitted to and approved by the relevant planning authority in consultation with Natural England, both acknowledging the necessity for the lighting to comply with Railway Industry Standards.

(2) The submitted details must demonstrate to the reasonable satisfaction of the relevant planning authority that the lighting levels on the northern platform of the former Pill Station will not be above 0.5 lux as a result of the permanent lighting proposed or the provision of lighting screens to restrict light spill on to the northern platform.

(3) Work No. 22 must not commence until written details of works to minimise light spill into the arches of the former stepped access to the northern platform of the former Pill Station have been submitted to and approved by the relevant planning authority in consultation with Natural England.

(4) The approved works must be installed in accordance with the approved details prior to first commercial use and thereafter maintained to the reasonable satisfaction of the relevant planning authority for ten years.

(5) First commercial use must not occur prior to the approval of a station travel plan for Pill Station by the relevant planning authority. The content of the station travel plan must substantially reflect the outline station travel plan for Pill Station submitted as part of the Environmental Statement, as Volume 4, Technical Appendices, Appendix 16.1 Transport Assessment (Part 17 of 18) – Appendix M, Outline Station Travel Plans.

### **Operational lighting – highways, bridges, paths and car parks**

**28.**—(1) Any part of the authorised development which includes—

- (a) new highway lighting;
- (b) new permissive paths or public rights of way including new lighting; or
- (c) new car parks at Portishead or Pill including new lighting,

must not commence until written details of any permanent lighting to be installed in connection with the relevant work, including measures to prevent light spillage, have been submitted to and approved in writing by the relevant planning authority.

(2) Any approved means of lighting must be installed in accordance with the approved details.

### **Works affecting M5 Junction 19**

**29.**—(1) Work Nos. 1 - 24A must not commence until the undertaker has created a Traffic Management Working Group (J19 TMWG) to consider the impacts of the authorised development on Junction 19 of the M5 special road which must be organised by the undertaker and to which National Highways, Bristol Port Company, Network Rail and the relevant highway authority will be invited to participate. Unless agreed otherwise by the parties J19 TMWG will meet on a monthly basis for the duration of the construction period.

(2) Work Nos. 1 - 24A must not commence until the local planning authority has approved in writing a construction traffic management plan having first consulted with National Highways in respect of those works as they affect Junction 19 of the M5 (“J19 CTMP”) and detailing—

- (a) construction traffic routes (including HGV routes, construction traffic profile (for the duration of the construction period disaggregated by daily movements, vehicle type (including abnormal loads) and construction activity) and operational hours;
- (b) the construction compounds to which the J19 CTMP will apply (“the J19 compounds”);
- (c) the management of junctions to and crossings of the public highway and other public rights of way;
- (d) the scheduling and timing of abnormal load movements;
- (e) temporary warning signs;
- (f) a scheme to encourage the use of public transport amongst contractors;
- (g) a monitoring strategy to include the provision of a monitoring report to be submitted to the J19 TMWG a minimum of one week in advance of the J19 TMWG monthly meeting;
- (h) a change process (in the event that any changes to the J19 CTMP are proposed during the construction phase) and a process to implement corrective measures if required; and
- (i) a construction worker travel plan, including car parking arrangements for staff and contractors.

(3) All morning shift construction staff arriving by private car at the J19 compounds must be told in advance not to arrive between the hours of 7.30am and 9am (Monday to Friday) (“the restricted hours”).

(4) Except in exceptional circumstances morning shift construction staff arriving by private car at the J19 compounds must not arrive within the restricted hours.

(5) The undertaker must record and report to National Highways in the CTMP monitoring and reporting strategy the numbers of morning shift staff arriving by private car at the J19 compounds within the restricted hours together with the exceptional circumstances for such arrival.

(6) The numbers of staff arriving by private car within the restricted hours at the J19 compounds in the absence of any exceptional circumstances must be reported to National Highways in accordance with sub-paragraph (5) together with the proposed steps to be taken by the undertaker to avoid any further such arrivals within the restricted hours.

### **Clanage Road, Bristol**

**30.**—(1) Work Nos. 26, 26A and 26B must not commence until a flood plan which details—

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- (a) the emergency and evacuation procedures for use of the temporary and permanent compound;
- (b) the location, height above ground level and the duration on site of the welfare facility on the temporary compound; and
- (c) the means to remove materials stored at the temporary and permanent compound in the event of flooding,

has been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency and the relevant lead local flood authority. The approved flood plan must thereafter be complied with to the satisfaction of the relevant planning authority.

(2) The landscaping and planting forming part of Work No. 26 must be carried out in accordance with the relevant design drawing prior to first use of Work No. 26 as a permanent maintenance compound. Any tree or shrub planted as part of the landscaping that, within a period of five years after planting, is removed, dies or becomes, in the 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, unless the relevant planning authority gives written consent to any variation.

(3) Prior to the first use of Work No. 26 as a permanent maintenance compound either—

- (a) the Clanlage Road compound, landscaping and access plan (Plan ref: 46470.BQ.04.20-261 rev T) must be redrawn to show the proposed levels for the flood compensation mitigation area to be 7.3m AOD; or
- (b) details of an on-site flood storage scheme or other works to provide adequate flood compensation mitigation,

must be submitted to the relevant planning authority for approval in consultation with the Environment Agency. The mitigation area must be carried out in accordance with the approved details and maintained thereafter.

(4) Prior to the first use of Work No. 26 as a permanent maintenance compound details of the permanent paladin type fencing including colour height and location must be submitted to and approved by the relevant planning authority and once installed must be permanently maintained.

(5) In this requirement “AOD” means above ordnance datum.

#### **New bridleway east of M5 Avonmouth Bridge**

**31.**—(1) Work No. 18 must not commence until the siting, design, landscaping and method of construction of the proposed bridleway have been submitted to and approved by the relevant planning authority. The submitted details must adhere to the principles shown on the Bridleway Extension under the Elevated M5 Plan.

(2) Work No. 18 must thereafter be carried out in accordance with the approved details.

#### **Cattle Creep Bridge, Easton in Gordano**

**32.**—(1) Work No. 1B must not commence before the undertaker has provided to the relevant planning authority and the Environment Agency a topographic survey setting out the existing ground levels at Cattle Creep Bridge, Easton in Gordano.

(2) Works to Cattle Creep Bridge must be carried out and retained thereafter in accordance with the principles set out in the Cattle Creep Proposed General Arrangement drawing and in particular the arch of the Cattle Creep Underbridge must not be altered and the ground level beneath the Cattle Creep Underbridge must not be raised without the prior consent in writing of the relevant planning authority following consultation with the Environment Agency and (if relevant) the relevant lead local flood authority.



### **Perimeter Track between Marsh Lane and the compounds under the M5 Avonmouth Bridge and on Lodway Farm**

**33.**—(1) Work Nos. 16A and 17 must not commence until a pre-commencement survey of the perimeter track between Marsh Lane and Work Nos. 16A and 17 (The Marsh Lane Track) has been undertaken and submitted to and approved by the relevant planning authority. The pre-commencement survey must include but not be limited to—

- (a) details of the current surfacing material;
- (b) details of the sub-structure; and
- (c) an assessment of whether the Marsh Lane Track as currently constructed would be able to take the volume of construction traffic for the authorised development that will need to access these works.

(2) Based on the results of the pre-commencement survey a strategy (the Marsh Lane Track Strategy) must be submitted to and approved by the relevant planning authority. The Marsh Lane Track Strategy must include but not be limited to—

- (a) details of what, if any, measures are required to minimise damage to the perimeter track by construction vehicles using the Marsh Lane Track to access Work Nos. 16A and 17;
- (b) a timescale for the implementation of any necessary measures;
- (c) a strategy for on-going maintenance and management of the Marsh Lane Track during construction of the authorised development;
- (d) a strategy for using the Marsh Lane Track in conjunction with the owner of the Marsh Lane Track and other parties permitted to use it by the owner; and
- (e) details of management measures to minimise dust generation from construction traffic for the authorised development.

(3) Work Nos. 16A and 17 must be carried out in accordance with the Marsh Lane Track Strategy.

(4) Within six months of the cessation of the use of Marsh Lane Track for construction traffic for the authorised development a post-construction survey must be submitted to the relevant planning authority for approval. The post-construction survey must include but not be limited to—

- (a) details of the state of the Marsh Lane Track post construction;
- (b) details of what measures or repairs, if any, are required to ensure that the Marsh Lane Track is returned in the same or similar state to pre-commencement; and
- (c) a timetable for the implementation of any measures or repairs that would be required.

(5) Any measures or repairs (including, without limitation, any physical works required as a result of the pre-commencement strategy or the post-construction survey) must thereafter be carried out as approved by the relevant planning authority unless the permission of the street authority (as street authority and as owner) for the relevant measures or repairs to the Marsh Lane Track is not forthcoming.

### **Pill Tunnel Eastern Portal Compound Access, Ham Green**

**34.** Work No. 24 must not commence until written details of the levels and surfacing of the work have been submitted to and approved by the relevant planning authority. Work No. 24 must thereafter be carried out and retained in accordance with the approved details.

### **Requirement for written approval**

**35.** Where under any of the above requirements the approval or agreement of the relevant planning authority or another person or organisation is required, that approval or agreement must be given in writing.

### **Amendments to approved details**

**36.**—(1) With respect to any requirement which requires the authorised development or any part of it to be carried out in accordance with the details, plans or schemes approved under this Schedule, the approved details, plans or schemes are taken to include any amendments that may subsequently be approved in writing by the relevant planning authority in consultation with any other consultee specified in the requirement in question, or approved in writing by the relevant planning authority or another approval authority.

(2) Any amendments to or variations from the approved details, plans or schemes must be unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

### **Anticipatory steps towards compliance with any requirement**

**37.** If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of this Part of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

## **PART 2**

### **Procedure for discharge of requirements**

#### **Applications made under requirements**

**38.**—(1) Where a valid application has been made to the relevant planning authority for any consent, agreement or approval required or contemplated by a requirement (including 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 the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the relevant planning authority acknowledge the application;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 39 (further information); or
- (c) such longer period as may be agreed between the undertaker and the relevant planning authority.

(2) Subject to sub-paragraphs (3) and (4), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order;
- (b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report that considers it likely that the subject matter of the application is to give rise to any materially new or materially different environmental effects from those reported in the environmental statement,

then the application is taken to have been refused by the relevant planning authority at the end of that period.

- (4) Sub-paragraph (2) will only apply to an application made under requirements if—
- (a) at least 6 weeks have elapsed since the application was received by the relevant planning authority;
  - (b) the undertaker has served on the relevant planning authority written notice that sub-paragraph (2) will apply from a date specified in the notice (such date not being less than 8 weeks from the date the application was received by the relevant planning authority); and
  - (c) by the date specified in the notice (or such later date as the relevant planning authority may agree with the undertaker) the relevant planning authority has not determined the relevant application.

### **Further information**

**39.**—(1) In relation to any part of an application made under this Schedule, the relevant planning authority has the right to request such further information from the undertaker as is necessary to enable the relevant planning authority to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary, the relevant planning authority must, within 20 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the relevant planning authority does not give such notification within this 20 day period the relevant planning authority is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 38 (applications made under requirements) and in this paragraph.

### **Appeals**

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

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required or contemplated by any of the provisions of this Order or grants it subject to conditions;
- (b) the relevant planning authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 38(1) (applications made under requirements);
- (c) on receipt of a request for further information under paragraph 39 (further information) 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) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the decision period as determined under paragraph 38;

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- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultees;
  - (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”)(67) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
  - (d) the relevant planning authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
  - (e) the appeal parties must make any counter-submissions to the appointed person within 20 business days of receipt of written representations under paragraph (d).
- (3) The appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.
- (4) The appointment of the appointed person may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.
- (5) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.
- (6) Any further information required under sub-paragraph (5) is to be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.
- (7) On an appeal under this paragraph, 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.
- (8) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or set by the appointed person under this paragraph.
- (9) The appointed person may proceed to a decision even though no written representations have been made within the prescribed 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.
- (10) The decision of the appointed person on an appeal is to be final and binding on the appeal parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.
- (11) If an approval is given by the appointed person under this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under this Order or for the purpose of this Schedule as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing

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(67) Such appointment may be made by the Planning Inspectorate on behalf of the Secretary of State.

but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person are to be met by the undertaker<sup>(68)</sup>.

(13) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance on Appeals published by the Department for Communities and Local Government on 3 March 2014 or any circular or guidance which may from time to time replace it.

### Interpretation of Part 2 of Schedule 2

41. In this part of this Schedule—

“the appeal parties” means the discharging authority, the undertaker and any requirement consultees;

“business day” means a day other than 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>(69)</sup>;

“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 planning authority in discharging that requirement.

## SCHEDULE 3

Article 13

### Streets subject to street works

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Street subject to street works</i>
In the District of North Somerset	Harbour Road, Portishead
In the District of North Somerset	Haven View, Portishead
In the District of North Somerset	Phoenix Way, Portishead
In the District of North Somerset	Quays Avenue, Portishead
In the District of North Somerset	Tansy Lane, Portishead
In the District of North Somerset	Galingale Way, Portishead
In the District of North Somerset	Conference Avenue, Portishead
In the District of North Somerset	Sheepway, Portbury
In the District of North Somerset	Station Road, Portbury

<sup>(68)</sup> The costs of the appointed person are calculated based on the applicable day rate for a Single Inspector as if he or she were appointed under section 78 and section 79 of the 2008 Act.

<sup>(69)</sup> 1971 c. 80.

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<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Street subject to street works</i>
In the District of North Somerset	The Portbury Hundred, Portbury
In the District of North Somerset	Royal Portbury Dock Road, Portbury
In the District of North Somerset	Marsh Lane, Easton in Gordano
In the District of North Somerset	Access road to the M5 Avonmouth Bridge east of Marsh Lane, Easton in Gordano
In the District of North Somerset	Severn Road, Pill
In the District of North Somerset	Access road to the M5 Avonmouth Bridge, west of Avon Road, Pill
In the District of North Somerset	Avon Road, Pill
In the District of North Somerset	Monmouth Court, Pill
In the District of North Somerset	Monmouth Road, Pill
In the District of North Somerset	Newport Road, Pill
In the District of North Somerset	Crusty Lane, Pill
In the District of North Somerset	Back Lane, Pill
In the District of North Somerset	Station Road, Pill
In the District of North Somerset	Chapel Row, Pill
In the District of North Somerset	Myrtle Hill, Pill
In the District of North Somerset	Sambourne Lane, Pill
In the District of North Somerset	Heywood Road, Pill
In the District of North Somerset	Lodway, Pill
In the District of North Somerset	Underbanks, Pill
In the District of North Somerset	Watchhouse Road, Pill
In the District of North Somerset	Macrae Road, Pill
In the District of North Somerset	Fitzharding Road, Pill
In the District of North Somerset	Ham Green, Pill
In the District of North Somerset	The Green, Ham Green, Pill
In the District of North Somerset	Hart Close, Ham Green, Pill
In the District of North Somerset	Chapel Pill Lane, Ham Green, Pill
In the City and County of Bristol	Clanage Road, Bower Ashton
In the City and County of Bristol	Ashton Road, Ashton
In the City and County of Bristol	Ashton Gate Underpass, Ashton
In the City and County of Bristol	Winterstoke Road, Ashton
In the City and County of Bristol	Marsh Road, Ashton

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<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Street subject to street works</i>
In the City and County of Bristol	Ashton Vale Road, Ashton

## SCHEDULE 4

Article 14

Streets to be stopped up

## PART 1

Street for which a substitute is to be provided

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>	<i>New Highway to be substituted</i>
District of North Somerset	Quays Avenue, Portishead	160 metres of Quays Avenue shown by vertical zebra stripes the points marked A and B-B on sheet 1 of the permanent and temporary stopping up and diversion plan	127 metres of new all-purpose highway shown by stipple hatch between the points marked C-C and D on sheet 1 of the permanent and temporary stopping up and diversion plan (Work No. 2)

## PART 2

Streets for which no substitute is to be provided

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>
In the District of Somerset, Portishead	North Moor Lane crossing of Trinity Primary School Portishead	All rights to use the former crossing south of the permanent and temporary stopping up and diversion plan
In the District of Somerset, Portbury	North Moor Lane crossing forming part of the Portbury Hundred	All rights to use crossing of the Drove, north of the highway known as the permanent and temporary stopping up and diversion plan

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## SCHEDULE 5

Article 15

## Streets to be stopped up temporarily

## PART 1

## Street to be stopped up temporarily for which a substitute is to be provided

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Street to be temporarily stopped up</i>	<i>Extent of temporary stopping up</i>	<i>Replacement to be provided</i>
In the District of North Somerset, Pill	Unnamed street from Avon Road, Pill to the Avonmouth Bridge of the M5 Special Road	Between the points marked TS4 and TS5 on sheet 6 of the permanent and temporary stopping up and diversion plan	Temporary route for non-motorised users and motorised vehicles of less than 50 cc engine capacity between the points marked TS4 and TS4A shown on sheet 6 of the permanent and temporary stopping up and diversion plan

## PART 2

## Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Bridleways and footpaths to be temporarily suspended</i>	<i>Extent of temporary suspension</i>
In the District of North Somerset, Easton in Gordano	Public bridleway LA8/67/10 from its junction with Marsh Lane to its termination point under the Avonmouth Bridge of the M5 Special Road	Between the points marked TS1 and TS2 on sheet 5 of the permanent and temporary stopping up and diversion plan
In the District of North Somerset, Easton in Gordano	Public footpath LA8/68/10 from its junction with public bridleway LA8/67/10 to its junction with public footpaths LA8/6/5 and LA8/6/10 under the Avonmouth Bridge of the M5 Special Road	Between the points marked TS2 and TS3 on sheet 5 of the permanent and temporary stopping up and diversion plan



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(1)	(2)	(3)
<i>Area</i>	<i>Bridleways and footpaths to be temporarily suspended</i>	<i>Extent of temporary suspension</i>
In the District of North Somerset, Pill	Public footpath LA8/5/40 between Lodway Close and Avon Road, Pill	Between the points marked TS6 and TS7 on sheet 6 of the permanent and temporary stopping up and diversion plan
In the District of North Somerset, Pill	Public footpath LA8/4/10 between Avon Road and Severn Road, Pill	Between the points marked TS7 and TS8 on sheet 6 of the permanent and temporary stopping up and diversion plan

## SCHEDULE 6

Article 16

### Bridleways, cycle tracks and footpaths

#### PART 1

##### Footpath to be diverted

(1)	(2)	(3)	(4)
<i>Area</i>	<i>Footpath to be stopped up</i>	<i>Extent of Stopping up</i>	<i>New Footpath to be substituted</i>
City and County of Bristol, Ashton	Part of footpath BCC/422/10 known as Barons Close Level Crossing or Containers Crossing, Ashton, Bristol	Between the points marked S31 and S32 on sheet 16 of the permanent and temporary stopping up and diversion plan	507.50 metres of footpath BCC/422/10 shown on sheet 16 of the permanent and temporary stopping up and diversion plan

#### PART 2

##### New public rights of way to be created

(1)	(2)
Cycle track	Between points CT1 and CT2 shown on Sheet 1 of the new highways plans
Cycle track	Between points CT2 and CT3 shown on Sheet 1 of the new highways plans
Cycle track	Between points CT4 and CT5 shown on Sheet 1 of the new highways plans
Cycle track	Between points CT7 and CT8 shown on Sheet 1 of the new highways plans

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<i>(1)</i>	<i>(2)</i>
Bridleway	Between points B1 and B2 shown on Sheet 5 of the new highways plans

## SCHEDULE 7

Article 17

## Access to works

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Description of access</i>
In the District of North Somerset	Access from Harbour Road, Portishead shown as AW1.1 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from Quays Avenue, Portishead shown as AW1.2 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from Phoenix Way, Portishead shown as AW1.3 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from Quays Avenue, Portishead shown as AW1.4 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway to field to the north of the highway, south of the disused Portishead branch line, shown as AW2.1 on sheet 2 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway north of the disused Portishead branch line, shown as AW2.2 on sheet 2 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway to field to the south of the highway, south of the disused Portishead branch line, shown as AW2.3 on sheet 2 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Portbury Hundred, west of Station Road Portbury, shown as AW3.1 on sheet 3 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway, Portbury, shown as AW3.2 on sheet 3 of the compounds, haul roads and access to works plan

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
In the District of North Somerset	Access from the highway known as Station Road, Portbury, shown as AW3.3 on sheet 3 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Portbury Hundred, east of Station Road, Portbury, shown as AW4.1 on sheet 4 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch Line railway, shown as AW5.1 on sheet 5 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as the Breaches, Easton in Gordano, shown as AW5.2 on sheet 5 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch Line railway, shown as AW5.3 on sheet 5 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Avon Road, Pill shown as AW6.1 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Monmouth Road, Pill shown as AW6.2 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Underbanks, Pill AW6.3 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Station Road, Pill AW6.4 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Lodway, Pill AW6.5 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Chapel Pill Lane to new maintenance compound (and temporary construction compound), Ham Green, Pill, shown as AW8.1 on sheet 8 of the compounds, haul roads and access to works plan

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
In the District of North Somerset	Access from the highway known as Chapel Pill Lane to the unadopted part of Chapel Pill Lane, Ham Green, Pill, shown as AW8.2 on sheet 8 of the access to works plan
In the District of North Somerset	Access from the River Avon Tow Path, shown as AW10.1 on sheet 10 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access on foot from the River Avon Tow Path, shown as AW11.1 on sheet 11 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the A369 classified road known as Abbots Leigh Road, shown as AW11C.1 on sheet 11C of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the River Avon Tow Path, shown as AW12.1 on sheet 12 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the River Avon Tow Path, shown as AW12.2 on sheet 12 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access on foot only from the River Avon Tow Path, shown as AW13.1 on sheet 13 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Rownham Hill, shown as AW14.1 on sheet 14 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Clanage Road, Bower Ashton, shown as AW15.1 on sheet 15 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Clanage Road, Bower Ashton, shown as AW15.2 on sheet 15 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Winterstoke Road, Ashton, shown as AW16.1 on sheet 16 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as South Liberty Lane, Ashton, shown as AW17.1 on sheet 17 the compounds, haul roads and access to works plan

## SCHEDULE 8

Article 20

## Closure of crossings

## PART 1

## Crossings: works required

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Crossing to be discontinued</i>	<i>Street or way to be stopped up</i>	<i>Replacement</i>
District of North Somerset, Portishead	Quays Portishead	Avenue, Crossing known as Quays Avenue Portishead between the points marked S1 and S2 on sheet 1 of the crossings to be extinguished plans	Work No. 2

## PART 2

## Crossings: No works required

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Level Crossing to be stopped up</i>	<i>Extent of stopping up</i>
In the District of North Somerset, Portishead	Pedestrian and cycle crossing between Galingale Way and Tansy Lane, Portishead at 129 miles, 16 chains	Crossing, between the points marked S5 and S6 on sheet 1 of the crossings to be extinguished plans
In the District of North Somerset, Portishead	The former Moor Lane crossing south of Trinity Primary School Portishead	Between the points marked S7 and S8 on sheet 1 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	The crossing forming part of The Drove, north of the highway known as Portbury Hundred	Between the points marked S17 and S18 on sheet 4 of the crossings to be extinguished plans

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## SCHEDULE 9

Article 21

## Accommodation and occupation crossings

## PART 1

## Crossings extinguished: works required

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Accommodation facility to be discontinued</i>	<i>Rights to be extinguished</i>	<i>Works to be provided</i>
In the District of North Somerset, Portbury	Crossing at 128 miles 46 chains at Shipway Gate Farm	All rights (if any) to use the crossing at Shipway Gate Farm between points S9 and N1 on sheet 2 of S10 shown on sheet 2 of the crossings to be extinguished plans	New gate and works on the highway known as Sheepway marked N1 on sheet 2 of the crossings to be extinguished plan
In the District of North Somerset, Portbury	Crossing at 128 miles 39 chains at Shipway Gate Farm	All rights (if any) to use the crossing at Shipway Gate Farm between the points S11 and S12 shown on sheet 2 of the crossings to be extinguished plans	New gate and works on the highway known as Sheepway marked N1 on sheet 2 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 128 miles 17 chains at Elm Tree Farm, Portbury	All rights (if any) to use the crossing to the south of Sheepway and to the west of Elm Tree Farm between the points S13 and S14 shown on sheet 3 of the crossings to be extinguished plans	New gate and works on the highway known as Portbury Hundred marked N2 on sheet 3 of the crossings to be extinguished plans

## PART 2

## Crossings for which no substitute is to be provided

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Crossing to be discontinued</i>	<i>Right to be extinguished</i>
In the District of North Somerset, Portishead	Crossing at 129 miles 22 chains, south of the pumping station, east of Avenue	All rights (if any) to use the crossing between the points marked S3 and S4 on sheet 1 of Avenue Portishead

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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Crossing to be discontinued</i>	<i>Right to be extinguished</i>
		the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 127 miles 71 chains north of the A369 Portbury Hundred classified road	All rights (if any) to use the crossing between the points marked S15 and S16 on sheet 3 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 127 miles 41 chains north of the A369 Portbury Hundred classified road known as Portbury No.3 crossing	All rights (if any) to use the crossing between the points marked S19 and S20 on sheet 4 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 127 miles 12 chains north of Court House Farm, Portbury	All rights (if any) to use the crossing between the points marked S21 and S22 on sheets 4 and 5 of the crossings to be extinguished plans
In the District of North Somerset, Easton in Gordano	Crossing at 126 miles 74 chains known as Manor Farm No.2 crossing, east of Marsh Lane, Easton in Gordano	All rights (if any) to use the crossing between the points marked S25 and S26 on sheet 5 the crossings to be extinguished plans
In the District of North Somerset, Easton in Gordano	Crossing at 126 miles 74 chains known as Manor Farm No.1 crossing, east of Marsh Lane, Easton in Gordano	All rights (if any) to use the crossing between the points marked S27 and 28 on sheet 5 the crossings to be extinguished plans
In the District of North Somerset, Pill	Crossing at 126 miles 56 chains, south east of M5 Avonmouth Bridge, Easton in Gordano	All rights (if any) to use the crossing between the points marked S29 and S30 on sheet 5 of the crossings to be extinguished plans

SCHEDULE 10

Article 27

Land in which only new rights, etc., may be acquired

<i>(1)</i>	<i>(2)</i>
<i>Number of land shown on the land plan</i>	<i>Purpose for which rights may be acquired</i>
01/97	To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, repair, cleanse, retain, renew, replace and

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(1)	(2)
<i>Number of land shown on the land plan</i>	<i>Purpose for which rights may be acquired</i>
01/215, 01/225	remove a drainage pipe for the purpose of draining water from the adjoining highway.
01/215, 01/225	To access (with or without vehicles plant and machinery) and to install, maintain, use, retain, repair, inspect, cleanse, renew, replace and remove a drainage pipe for the purpose of draining water from adjoining land.
01/252, 01/255, 01/260, 01/270	To access, pass and repass and remain upon the land (with or without vehicles plant and machinery) for all purposes in connection with access to adjoining land.
02/19	To access and remain upon the land (with or without vehicles, plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.
02/117	To access and remain upon the land (with or without vehicles plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.
02/121	To access, pass and repass and remain upon the land (with or without vehicles plant and machinery) for all purposes in connection with access to adjoining land.
03/31	To access and remain upon the land (with or without vehicles plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.
03/69, 03/77, 03/78	To access and remain upon the land (with or without vehicles plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.
05/75, 05/85, 05/86	To access, pass and repass and remain upon the land with or without vehicles, plant and machinery and for all purposes in connection with inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing—



<i>(1)</i> <i>Number of land shown on the land plan</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
05/100, 05/103, 05/105, 05/112	(a) an accommodation bridge and associated walls, embankments and structures; and  (b) a culvert, watercourse and head wall.  To access, pass and repass and remain upon the land with or without vehicles, plant and machinery (including road and rail vehicles) to access the national railway network and for all purposes in connection with access to neighbouring land.
05/104, 05/165, 05/171	(i) To access, pass and repass and remain upon the land with or without vehicles, plant and machinery;  (ii) To install, lay, maintain, use, transmit, retain, renew, repair, replace, inspect and remove railway signalling and communications apparatus; and  (iii) To pass and repass with or without vehicles, plant and machinery (including rail vehicles) to access the national railway network.
05/107, 05/108	To access, pass and repass and remain upon the land with or without vehicles, plant and machinery (including road and rail vehicles) and to access the national railway network, together with the right to use the land for the purpose of transferring road and rail maintenance vehicles onto the railway and removing road and rail maintenance vehicles from the railway.
06/25, 06/55	(i) To access, pass and repass and remain upon the land with or without vehicles, plant and machinery;  (ii) To alter or remove existing railway and to install, lay, retain, renew, repair, inspect and replace railway track and apparatus;  (iii) To install, lay, inspect, maintain, use, transmit, retain, renew, repair, replace and remove railway signalling and communications apparatus; and  (iv) To pass and repass with or without vehicles, plant and machinery (including

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<i>(1)</i> <i>Number of land shown on the land plan</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
<p>06/160, 06/280, 06/285, 06/290, 06/295, 06/300, 06/305, 06/310, 06/315 06/320, 06/325, 06/330, 06/335, 06/340, 06/345, 06/350, 06/355, 06/360, 06/365, 06/370, 06/375, 06/380, 06/385, 06/390, 06/395, 06/400, 06/405, 06/410, 06/415, 06/420, 06/425, 06/430, 06/435, 06/440, 06/445, 06/450, 06/455, 06/460, 06/465, 06/470, 06/475, 06/480, 06/485, 06/490, 06/495, 06/500, 06/510, 06/520</p>	<p>rail vehicles) to access the national railway network.</p> <p>(i) To insert, inspect, maintain, adjust, repair, remove, retain and renew soil nails at a depth at least 1 metre below the current surface of the land together with access for all necessary workmen, vehicles, machinery and other apparatus at any time in, through and under the land for those purposes;</p> <p>(ii) To enter, with any necessary workmen, contractors or other authorised persons and bring necessary plant, equipment, materials and vehicles onto the land and to remain thereon for so long as is reasonably required for the purposes of—</p> <p>(a) carrying out site soil and environmental surveys and environmental mitigation measures and geotechnical ecological archaeological and site investigations; and</p> <p>(b) making trial holes in such positions to investigate the nature of the surface layer and subsoil and taking soil samples.</p> <p>(iii) To undertake works to upgrade, stabilise, repair, improve, install or replace fences; and</p> <p>(iv) A restrictive covenant not to do anything or allow anything to be done on the land which may cause damage to the soil nails or other subsoil works or affect their proper and efficient operation.</p>
<p>06/566</p>	<p>To install, lay, maintain, use, operate, retain, renew, repair, replace, inspect and remove electrical apparatus and to distribute electricity through the installed cables.</p>
<p>06/634, 06/644</p>	<p>To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining renewing, replacing and removing railway and the abutment and arches of a viaduct on adjoining land.</p>
<p>06/640</p>	<p>To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining,</p>

<i>(1)</i>	<i>(2)</i>
<i>Number of land shown on the land plan</i>	<i>Purpose for which rights may be acquired</i>
06/641, 06/642, 06/643	renewing, replacing and removing the abutment and arches of a viaduct on adjoining land. To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining renewing, replacing and removing a railway and the abutment and arches of a viaduct on adjoining land.
06/646	To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining, renewing, replacing and removing a railway and the abutment and arches of a viaduct on adjoining land.
07/71, 07/73, 07/77, 07/78, 07/130	To access, pass and repass with or without vehicles (such vehicles being limited to no more than 3.5 tonnes laden in weight) to access the adjoining railway.
08/12, 08/13	To access, pass and repass and remain upon the land with or without vehicles to access adjoining land.
08/45	To access, pass and repass and remain upon the land with or without vehicles to access adjoining land.
09/12, 09/13, 09/14	To access, remain upon, pass and repass and access adjoining land for the inspection, construction, operation, use and maintenance of the authorised development.

SCHEDULE 11

Article 27

Modification of compensation and compulsory purchase enactments  
for creation of new rights and imposition of restrictive covenants

**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 or imposition of a restrictive covenant as they apply as respects compensation for the compulsory purchase of land and interests in land.

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

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(2) For section 5A(5A)(70) (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 11 to the Portishead Branch Line (MetroWest Phase 1) Order 2022 (“the 2022 Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 (as substituted by paragraph 5(8) of Schedule 11 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 limitation on the scope of paragraph 1, the Land Compensation Act 1973(71) 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 or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

#### **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 acquisition 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 24 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27(1) (compulsory acquisition of rights or imposition of covenants)—

- (a) with the modification 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 in 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—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) 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 or the restrictive covenant is to be imposed is depreciated by the

(70) Sub-section (5A) was inserted by paragraph 4(2) of Schedule 17 to the Housing and Planning Act 2016 (c. 22).

(71) 1973 c. 26.

acquisition of the right or the imposition of the restrictive covenant 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 (owners under incapacity);
- (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 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 or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry) of the 1965 Act is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 24), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(72) (powers of entry: further notices of entry), 11B(73) (counter-notice requiring possession to be taken on specified date), 12(74) (unauthorised entry) and 13(75) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(76) (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 or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(4) (modification of Part 1 of the 1965 Act) 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 or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

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

#### “SCHEDULE 2A

#### COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

##### **Introduction**

**1.—**(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have

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(72) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(73) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.

(74) 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.

(75) 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).

(76) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

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not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the 1981 Act) of the Portishead Branch Line (MetroWest Phase 1) Order 2022 in respect of the land to which the notice to treat relates.

(2) But see article 31(3) (acquisition of subsoil or airspace only) of the Portishead Branch Line (MetroWest Phase 1) Order 2022 which excludes the acquisition of subsoil or airspace only from this Schedule.

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

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

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

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

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

5. On receiving a counter-notice, the acquiring authority must decide whether to—
  - (a) withdraw the notice to treat,
  - (b) accept the counter-notice, or
  - (c) refer the counter-notice to the Upper Tribunal.

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

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

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

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

### **Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant 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 or the imposition of the restrictive covenant,
- (b) the use to be made of the right or restrictive covenant proposed to be acquired or imposed, and

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- (c) if the right or restrictive covenant is proposed to be acquired or imposed 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 or the imposition of the restrictive covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the 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 they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

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

## SCHEDULE 12

Article 33

## Land of which temporary possession may be taken

(1)	(2)	(3)	(4)
<i>Location</i>	<i>Number of land shown on land plan</i>	<i>Purpose for which temporary possession may be taken</i>	<i>Relevant part of the authorised development</i>
In the District of North Somerset, Portishead	01/70, 01/75, 01/76, 01/77	Working space and access for construction	Work No. 2
In the District of North Somerset, Portishead	01/91	Working space and access for construction	Work No. 2A
In the District of North Somerset, Portishead	01/111, 01/112	Access, working space, materials storage, compound and lay down area for construction	Work Nos. 1, 7A and 7D
In the District of North Somerset, Portishead	01/210	Access, working space for construction and ecological mitigation	Work Nos. 1 and 7B
In the District of North Somerset, Portishead	01/211, 01/212, 01/216	Access, working space for construction and ecological mitigation	Work Nos. 1 and 7B
In the District of North Somerset, Portishead	01/220, 01/221, 01/230, 01/231, 01/232	Access, working space and materials storage, compound, lay down	Work Nos. 1 and 7D

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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Location</i>	<i>Number of land shown on land plan</i>	<i>Purpose for which temporary possession may be taken</i>	<i>Relevant part of the authorised development</i>
		area for construction and diversionary route for path	
In the District of North Somerset, Portishead	01/222	Access, working space for construction	Work Nos. 1, 5, 7A and 7D
In the District of North Somerset, Portishead	01/226	Access, working space, and ecological mitigation for construction	Work Nos. 1, 5 and 7A
In the District of North Somerset, Portishead	01/240, 01/241, 01/250	Access, working space for construction and ecological mitigation	Work No. 1
In the District of North Somerset, Portishead	01/251, 01/265	Access, working space for construction and diversionary route for path	Work No. 1
In the District of North Somerset, Portishead	01/296, 01/297	Access, working space for construction and ecological mitigation	Work No. 1
In the District of North Somerset, Portishead	01/310	Access, haul road, materials storage and working space for construction	Work Nos. 1, 1A, 1B, 1C and 8
In the District of North Somerset, Portbury	02/05, 02/06, 02/07, 02/08, 02/10, 02/20, 02/26, 02/27	Access and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/30	Access, working space for construction and ecological mitigation	Work Nos. 1 and 9
In the District of North Somerset, Portbury	02/31, 02/32	Access and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/35	Temporary construction compound and materials storage	Work Nos. 1, 9 and 10A
In the District of North Somerset, Portbury	02/36, 02/37	Temporary diversion of permissive cycle path	Work Nos. 9 and 10A
In the District of North Somerset, Portbury	02/40, 02/41, 02/45, 02/46, 02/75, 02/76, 02/82	Access, construction haul road, material storage and ecological mitigation works	Work Nos. 1, 1A, 1B, 1C and 8



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In the District of North Somerset, Portbury	02/60, 02/65, 02/120	Access, haul road, material storage and working space for construction	Work Nos. 1, 1A, 1B, 1C and 11A
In the District of North Somerset, Portbury	02/85, 02/122	Access, haul road, visibility splays and working space for construction	Work Nos. 1, 1A, 1B, 1C and 11A
In the District of North Somerset, Portbury	02/116	working space and access for construction and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/118	working space and access for construction and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/145	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 7, 12, 12A, 20A and 22
In the District of North Somerset, Portbury	02a/10, 02a/15	Access, haul road and visibility splays and working space	Work Nos. 8, 11 and 11A
In the District of North Somerset, Portbury	02b/05	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 7, 12, 12A, 20A and 22
In the District of North Somerset, Portbury	03/10	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 7, 12, 12A, 20A and 22
In the District of North Somerset, Portbury	03/21	Access, working space and environmental mitigation works	Work No. 1
In the District of North Somerset, Portbury	03/35, 03/36, 03/37, 03/38	Access and environmental mitigation works	Work No. 1

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In the District of North Somerset, Portbury	03/47, 03/67, 03/68	Access, working space and environmental mitigation works	Work No. 1
In the District of North Somerset, Portbury	03/65	Working space and works to adjacent disused station platform	Work No. 1
In the District of North Somerset, Portbury	03/71, 03/76	Access, material storage, working space and environmental mitigation	Work No. 1A
In the District of North Somerset, Portbury	03/80	Access, working space and visibility splay	Work No. 1A
In the District of North Somerset, Portbury	04/06, 04/07, 04/08	Access, working space and environmental mitigation	Work No. 1A
In the District of North Somerset, Portbury	04/10, 04/13, 04/15	Access, material storage, working space and environmental mitigation	Work No. 1A
In the District of North Somerset, Portbury	04/20	Access, turning space, materials storage, working space and environmental mitigation	Work Nos. 1, 1A, 1B, 1C and 13
In the District of North Somerset, Portbury	04/25, 04/46	Access, visibility splays, working space and environmental mitigation	Work No. 13
In the District of North Somerset, Portbury	04/41	Access, visibility splays, working space and environmental mitigation	Work No. 13
In the District of North Somerset, Portbury	04/42	Access, working space, materials storage and environmental mitigation	Work Nos. 1, 1A, 1B, 1C and 13
In the District of North Somerset, Portbury	04/55	Working space and vegetation clearance	Work No. 14

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In the District of North Somerset, Easton in Gordano	04/90	Working space and vegetation clearance	Work Nos. 1A, 14A and 14B
In the District of North Somerset, Easton in Gordano	04/105	Working space and vegetation clearance	Work No. 1A
In the District of North Somerset, Easton in Gordano	05/10	Working space, access and vegetation clearance	Work Nos. 1A and 15
In the District of North Somerset, Easton in Gordano	05/17, 05/18	Access to works	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/25, 05/106	Access and vegetation clearance	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/26, 05/28	Working space, access and vegetation clearance	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/113	Working space, access and vegetation clearance	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/150, 05/152	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 16, 16A, 16C, 17, 17A, 18, 20A and 22
In the District of North Somerset, Easton in Gordano	05/170	Temporary construction compound, materials storage	Work Nos. 1, 1A, 1B, 1C, 16, 16A, 16C, 18, 19, 20A and 22
In the District of North Somerset, Lodway	06/15	Working space, access and vegetation clearance	Work No. 1A
In the District of North Somerset, Lodway	06/30	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 16, 16A, 16C, 17, 17A, 18, 20A and 22
In the District of North Somerset, Lodway	06/35, 06/36, 06/40, 06/45, 06/50, 06/65	Working space and access to works	Work Nos. 1A, 1B, 1C, 17, 17A, 18 and 20A

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In the District of North Somerset, Pill	06/60, 06/105	Working space, oversail for crane and access to works	Work Nos. 1B, 1C, 20, 20A and 20B
In the District of North Somerset, Pill	06/61, 06/62, 06/63	Temporary diversion of cycle path	Work Nos. 1B, 1C, 20, 20A and 20B
In the District of North Somerset, Pill	06/70, 06/75, 06/85, 06/90, 06/95, 06/100, 06/140, 06/145, 06/155	Working space and access to works	Work Nos. 1B, 1C, 20A and 20B
In the District of North Somerset, Pill	06/190	Access to works	Work Nos. 1B, 1C, 20A and 20B
In the District of North Somerset, Pill	06/532, 06/535	Working space and access to works	Work Nos. 22A and 22B
In the District of North Somerset, Pill	06/533	Temporary compound	Work Nos. 22A and 22B
In the District of North Somerset, Pill	06/550, 06/555, 06/556	Access to Works	Work Nos. 1B, 1C and 22
In the District of North Somerset, Pill	06/596, 06/597, 06/598	Access to Works, demolition and replacement of wall	Work Nos. 1B, 1C and 20A
In the District of North Somerset, Pill	06/632, 06/633, 06/636	Access to Works	Work Nos. 1B and 1C
In the District of North Somerset, Pill	06/647, 06/661, 06/666, 06/705, 06/710, 06/730	Working space and access to works	Work Nos. 1B and 1C
In the District of North Somerset, Pill	07/05, 07/10, 07/15, 07/20, 07/25, 07/30, 07/35, 07/36, 07/44, 07/46, 07/51, 07/52, 07/53, 07/55, 07/56, 07/58, 07/59, 07/60, 07/65, 07/70, 07/80, 07/85, 07/90, 07/100, 07/105, 07/110, 07/111, 07/112, 07/113, 07/114, 07/116, 07/117, 07/121	Working space access to works and embankment strengthening	Work Nos. 1B and 1C
In the District of North Somerset, Ham Green	08/11, 08/20, 08/26	Working space and access to works	Work Nos. 24 and 24A
In the District of North Somerset, Ham Green	08/21, 08/22, 08/23, 08/24	Access to works	Installation of fencing and minor works to Parson Street to Royal Portbury Dock railway

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In the District of North Somerset, Pill	08/50, 08/60, 08/61	Access to works	Work Nos. 24 and 24A
In the District of North Somerset, Abbots Leigh	08/71	Access to works and materials storage	Installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	09/11	Access to works and materials storage	Installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	09/20	Access to works and materials storage	Storage of materials, installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	09/22, 09/23, 09/25	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	10/06	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the City and County of Bristol, Abbots Leigh	10/11	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the City and County of Bristol, Abbots Leigh	10/25	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	10/30	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to

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<i>Location</i>	<i>Number of land shown on land plan</i>	<i>Purpose for which temporary possession may be taken</i>	<i>Relevant part of the authorised development</i>
			Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	10/35	Access to works, rock picking, rock bolting, and vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the adjacent Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/06	Access to works, rock picking, rock bolting, and vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting, and rock picking for the protection of the adjacent Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works
In the District of North Somerset, Abbots Leigh	11/07	Access to works, working space and environmental mitigation	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the City and County of Bristol, Abbots Leigh	11/10, 11/15	Access to works and working space	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation
In the City and County of Bristol, Abbots Leigh	11/20	Access to works and working space	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock

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In the City and County of Bristol, Abbots Leigh	11/25	Access to works and working space	railway, ecological mitigation Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/41, 11/42	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the adjacent railway, installation of fencing and access for minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/61	Access to works	Vegetation clearance and rock picking for the protection of Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/65, 11/70, 11/75,	Access to works	Vegetation clearance and rock picking for the protection of Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/80	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the adjacent railway, installation of fencing and access for minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation

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In the District of North Somerset, Abbots Leigh	11a/05	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11a/10, 11a/15	Access to works	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11b/05, 11b/10, 11b/15, 11b/20, 11b/30, 11b/35	Access to works	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11b/25	Access to works	Micro compound, access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11c/05, 11c/10, 11c/15	Access to works	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	12/07 12/10, 12/20, 12/21, 12/30	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Work No. 25 vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing



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In the City and County of Bristol, Abbots Leigh	12/25	Access to works	and access for minor works to railway  Work No. 25 Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway
In the District of North Somerset, Abbots Leigh	13/07, 13/31, 13/32	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway
In the City and County of Bristol, Abbots Leigh	13/33, 13/36, 13/40	Access to works	Work No. 25 Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway
In the District of North Somerset, Abbots Leigh	13/55	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to existing railway

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In the District of North Somerset, Abbots Leigh	14/05	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the City and County of Bristol	14/10, 14/25, 14/35	Access to works	Work No. 25 Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway
In the City and County of Bristol	15/15	Temporary construction compound, materials storage and access to works	Work Nos. 26 and 26A installation of fencing and access for minor works to Parson Street to Royal Portbury Dock railway
In the City and County of Bristol	16/56, 16/57, 16/58, 16/61, 16/62, 16/63, 16/75, 16/80, 16/85	Access to works	Work No. 28
In the City and County of Bristol	17/05, 17/20	Temporary construction compound, materials storage and access to works	Work No. 29
In the City and County of Bristol	17/10, 17/15	Access to works	Work No. 29

## SCHEDULE 13

Article 44

## Hedgerows

## PART 1

## Hedgerows to be removed

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Location of hedgerow</i>	<i>Work to be carried out</i>	<i>Relevant part of the authorised</i>
North of Sheepway and east of Fennel Way along the south side of the disused railway line shown marked H2/1 on sheet 2 of the hedgerow location plan.	Removal of part of a hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work No. 8
North side of Sheepway west of bridge over disused railway line shown marked H2/2 on sheet 2 of the hedgerow location plan.	Removal of part of a hedgerow to allow for the temporary construction haul road crossing over Sheepway. Hedgerow to be replanted on completion of works.	Work No. 8
South side of Sheepway west of bridge over disused railway line shown marked H2/3 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road east of Sheepway. Hedgerow to be replanted on completion of works.	Work No. 11A
South side of the disused railway line east of Shipway Gate Farm shown marked H2/4 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work No. 11A
South side of the disused railway line east of Shipway Gate Farm shown marked H2/5 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work No. 11A
South side of the disused railway line east of Shipway Gate Farm shown marked H2/6 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work No. 12A
South of the disused railway line and north of the Portbury Hundred, shown marked H3/1	Removal of part of hedgerow for access within the construction compound.	Work No. 12A

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<i>Location of hedgerow</i>	<i>Work to be carried out</i>	<i>Relevant part of the authorised</i>
on sheet 2 of the hedgerow location plan.	Hedgerow to be replanted on completion of works.	
Lodway Farm on southern boundary of the disused railway line, shown marked H5/1 on sheets 5 and 6 of the hedgerow location plan.	Removal of part of hedgerow adjacent to the disused line. Hedgerow to be replanted on completion of works.	Work Nos. 1A and 17
Lodway Farm, shown marked H5/2 on sheets 5 and 6 of the hedgerow location plan.	Removal of part of hedgerow for access within the construction compound. Hedgerow to be replanted on completion of works.	Work No. 17
South side of Chapel Pill Lane, Ham Green, Pill, shown marked H8/1 on sheet 8 of the hedgerow location plan.	Removal of part of hedgerow for new access.	Work No. 24

## PART 2

### Important Hedgerow

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Reference of hedgerow</i>
In the district of North Somerset, at Lodway, Pill	The important hedgerow marked 1 on the important hedgerow plan

## SCHEDULE 14

Article 46

### Traffic Regulation

#### In the district of North Somerset

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Road</i>	<i>Extent</i>	<i>Measure</i>
Harbour Road, Portishead	Between the junction of Harbour Road with Harbour Road (leading to Harbour Road Trading Estate) and the junction of Harbour Road with re-aligned Quays Avenue, as shown coloured red on the	Prohibition of waiting at any time.

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<i>Road</i>	<i>Extent</i>	<i>Measure</i>
	permanent traffic regulation order plans (Portishead Station)	
Quays Avenue, Portishead	Between the junction of Quays Avenue with the realigned Harbour Road to the junction of Quays Avenue with Wyndham Way as shown coloured red on the permanent traffic regulation order plans (Portishead Station)	Prohibition of waiting at any time.
Phoenix Way, Portishead	Between the junction of Phoenix Way with the realigned Quays Avenue to a point 47 metres west of the junction of Phoenix Way with Marjoram Way as shown coloured red on the permanent traffic regulation order plans (Portishead Station)	Prohibition of waiting at any time (save for designated parking bays).
Portbury Hundred, Portbury	At a point 457 metres west of the junction of the A369 Portbury Hundred classified road and Station Road, Portbury, either on to or from the highway known as Portbury Hundred at the location shown on the permanent traffic regulation order plans (A369 Portbury Hundred)	Prohibition of right turn manoeuvres.
Monmouth Road, Pill	From the junction of Monmouth Road with Crusty Lane to the junction of Monmouth Road with Station Road as shown coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.
Station Road, Pill	From the junction of Station Road with Monmouth Road to the junction of Station Road with Heywood Road as shown in the locations coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.
New Road, Chapel Row and Myrtle Hill, Pill	To the extent shown coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.

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<i>Road</i>	<i>Extent</i>	<i>Measure</i>
Sambourne Lane, Pill	To the extent shown coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.
Macrae Road, The Sanctuary and Hart Close gyratory, Ham Green, Pill	At the junction of Macrae Road and Hart Close, as shown coloured red on the permanent traffic regulation order plans (Ham Green)	Prohibition of waiting at any time.
Junction of Ham Green and Macrae Road, Ham Green, Pill	At the junction of Ham Green and Macrae Road as shown coloured red on the permanent traffic regulation order plans (Ham Green)	Prohibition of waiting at any time.

## SCHEDULE 15

Article 52

## Amendment of Local Legislation

**Byelaws**

<i>(1)</i>	<i>(2)</i>
<i>Title</i>	<i>Byelaw to be disapplied</i>
North Somerset Levels Internal Drainage Board Land Drainage Byelaws 2004	<p>Byelaw 3 (control of introduction of water and increases in flow or volume of water);</p> <p>Byelaw 7 (detrimental substances not to be put in watercourses);</p> <p>Byelaw 14 (vehicles not to be driven on banks);</p> <p>Byelaw 15 (banks not to be used for storage);</p> <p>Byelaw 17 (fences, excavations, pipes, etc.) but only insofar as it relates to 17 (a), (b), (c) and (e);</p> <p>Byelaw 24 (damage to property of the Board).</p>

## SCHEDULE 16

Articles 37 and 53

### Protective Provisions

## PART 1

### Protection for Network Rail Infrastructure Limited

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

2. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“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 his powers under section 8 (licences) of the Railways Act 1993<sup>(77)</sup>;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006<sup>(78)</sup>) 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—

(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.

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

<sup>(77)</sup> 1993 c. 43. Section 8 was amended by sections 216 and 274 of, and paragraph 4 of Schedule 17 to, the Transport Act 2000 (c. 38), section 16(5) of, and Schedule 2 to, the Railways and Transport Safety Act 2003 (c. 20), sections 1(1) and 59(6) of, and paragraph 3 of Schedule 1 and Part 1 of Schedule 13 to, the Railways Act 2005 (c. 14) and S.I. 2015/1682.

<sup>(78)</sup> 2006 c. 46.

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

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use 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.

**4.—**(1) The undertaker must not exercise the powers conferred by articles 24 (compulsory acquisition of land) or 27 (compulsory acquisition of rights or imposition of covenants) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272(79) (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act, as applied by article 37 (statutory undertakers and electronic communications code network operators), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

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

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

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

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, 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 must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

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(79) Section 272 was amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act 2003 (c. 21).



(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

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

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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

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

**7.** The undertaker must—

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

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

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

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alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

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

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

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

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

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

**11.—(1)** In this paragraph—

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

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

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the

relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

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

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

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) 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 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised railway 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 to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(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

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consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) 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 56 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

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

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

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

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

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

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under 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 must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) 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 must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

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

(6) In this paragraph—

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

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

**16.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

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

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

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

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

**20.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 10 (consent to transfer benefit of order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

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

**21.** The undertaker must no later than 28 days from the date that the plans and documents submitted to and certified by the Secretary of State in accordance with article 55 (documents to be certified) are certified by the Secretary of State, provide a set of those plans and documents to Network Rail in the form of a computer disc with read only memory.

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## PART 2

### Protection for Electricity, Gas, Water, Petroleum and Sewerage Undertakers.

**22.** The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

**23.** 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 not 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~~(80)~~), 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~~(81)~~ 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~~(82)~~; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)~~(83)~~ (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104~~(84)~~ (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; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989~~(85)~~;
- (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

**(80)** 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).

**(81)** 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).

**(82)** 1991 c. 56.

**(83)** 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), and section 96(1) of the Water Act 2003 (c. 37).

**(84)** Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29)

**(85)** 1989 c. 29. A new section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and was further amended by sections 136 and 145(5) to (7) of and Schedules 19 and 23(1) to the Energy Act 2004 (c. 20), S.I. 2012/2400 and S.I. 2011/2704. There are other amendments to section 6 but none are relevant to this Order.

(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 utility undertaker to whom it belongs or by whom it is maintained.

### **On street apparatus**

24. 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.

### **Acquisition of land**

25. 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**

26.—(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, 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.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility 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 in question 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 is to 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 56 (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 56, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (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

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without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

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

**27.**—(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 56 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway, the arbitrator must—

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway which forms or is to form part of Network Rail's network and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the undertaker or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the 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**

**28.**—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 26(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 26(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan, section and description 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, section and description under sub-paragraph (1) are 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 23 to 27 apply as if the removal of the apparatus had been required by the undertaker under paragraph 26(2).



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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

### **Expenses and costs**

**29.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses 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 (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 26(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (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,

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 56 (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) is to 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 must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must 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) 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 undertaker 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.

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## Indemnity

**30.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 26(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of 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 utility undertaker,

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 a utility undertaker, its officers, servants, contractors or agents.

(3) 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 which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

## PART 3

### Protection for Operators of Electronic Communications Code Networks

**32.**—(1) The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

“electronic communications apparatus” has the same meaning as in the electronic communications code<sup>(86)</sup>;

“the electronic communications code” has the same meaning as in section 106(1) (application of the electronic communications code) of the 2003 Act<sup>(87)</sup>;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 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;

<sup>(86)</sup> 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).

<sup>(87)</sup> Section 106 was amended by section 4 of the Digital Economy Act 2017.

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“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

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

**33.** The exercise of the powers conferred by article 37 (statutory undertakers and electronic communications code network operators) is subject to Part 10 of the electronic communications code.

**34.—(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 the works comprised in the authorised development—

(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 must—

(a) make reasonable compensation to an operator for loss sustained by it; and

(b) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator 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 may be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise 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 56 (arbitration).

**35.** 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 damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

## PART 4

### Protection for the Environment Agency

**37.—(1)** The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

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(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“emergency” means a situation which—

- (a) is unexpected, in that there is little or no warning, or aspects of the event could not have reasonably been predicted in advance;
- (b) is a serious event presenting a risk of harm or damage to people, property or the environment; and
- (c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation; and

“relevant watercourse” has the same meaning as in article (powers in relation to relevant watercourses).

**38.**—(1) Where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Agency to a relevant watercourse, it must give the Agency 56 days’ written notice of that requirement.

(2) Except in cases of emergency where the undertaker interferes with or obstructs access by the Agency to a relevant watercourse and it is not possible for the undertaker to give the Agency the notice required under sub-paragraph (1), a suitable alternative access must be provided prior to and for the duration of any such interference.

**39.** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest of the Agency in any land or proposes to interfere with, or remove, any of the Agency’s apparatus it must give the Agency 56 days’ written notice before any such interest is acquired or any apparatus is interfered with or removed.

**40.** The undertaker must indemnify the Agency in respect of all costs, charges and expenses which it may reasonably incur or which it may sustain in the examination of plans or other matters under this Part of this Schedule.

**41.** Any dispute arising between the undertaker and the Agency under this Part of this Schedule is to be determined by arbitration in accordance with article 56 (arbitration).

## PART 5

### Protection for First Corporate Shipping Limited

**42.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and BPC.

**43.** In this Part—

“access works” means works—

- (a) on, over or under or otherwise affecting a private street or any public right of way on BPC’s property, including the kerbs, splitter islands, footways, verges and carriageway of such street and any road markings, signing, signals, and other street furniture;
- (b) to alter, modify, improve, create or provide any means of access (whether temporary or otherwise) on or across BPC’s property or to or from any private street or any other part of BPC’s property or to or from any dock public road;
- (c) to alter the layout of any private street or any public right of way on BPC’s property; and
- (d) to position or install plant or equipment on or over any private street or any public right of way on BPC’s property,

and includes, without limitation on the scope of the foregoing, any works under article 13 (street works and power to alter layout etc., of streets) or article 17 (access to works) in respect of or affecting any private street or any public right of way on BPC's property;

“ancillary works” means embankments, earthworks, retaining structures or works, planting, landscaping or other mitigation, fencing and all other works falling within the descriptions of the further associated development set out in paragraphs (a) to (x) (inclusive) of Schedule 1;

“BPC” means First Corporate Shipping Limited (registered company number 02542406), trading as The Bristol Port Company, being the statutory harbour authority and competent harbour authority for the Port;

“BPC's apparatus” means all and any gas, oil and water pipes, water tanks, cisterns, drains and drainage works, sewers, pumps, electric and communication wires, cables and plant, ducts, conduits, governors, transformers, meters and any other service media, surface water interceptors (and whether in all cases for drainage, gas, oil water, electricity, telephone, television, data and information transmission or any other service) on BPC's property;

“BPC's property” means the whole and each of every part of all the leasehold and freehold land and rights and the benefit of all covenants, owned by or vested in BPC at Avonmouth, Chittening and Portbury—

- (a) upon, across, under, over or in respect of or affecting which any powers conferred by this Order may be exercised; or
- (b) upon, across, under or over which there is situated anything over or in respect of which any such powers may be exercised,

and includes, without limitation on the scope of the foregoing, the Port's railway and any private street but does not include the Court House Farm terminable access;

“BPC's representative” means the person appointed by BPC from time to time to be its representative for the purposes of this Order;

“certified documents” means any and all of the plans and documents certified by the Secretary of State for the purpose of this Order;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“construction access rights” means any and all powers conferred on the undertaker by this Order to exercise temporary powers of access over any land with or without vehicles, plant and equipment including, without limitation on the scope of the foregoing, any ancillary powers to remove buildings and vegetation from that land and to construct works for the purpose of providing a means of access;

“Court House Farm easement” means a Deed of Grant of Easement dated 4 September 2017 made between Network Rail and First Corporate Shipping Limited t/a The Bristol Port Company;

“Court House Farm terminable access” means the existing crossing at grade over the disused Portishead Branch Line which is described in the Court House Farm easement;

“dock public road” means each of the streets known as Marsh Lane, Royal Portbury Dock Road (including the roundabout at its junction with Portbury Way and Gordano Way), Redland Avenue, Gordano Way, Garonor Way and Portbury Way to the extent that it is maintainable highway;

“drainage works” means works—

- (a) to create, alter or remove any culvert or other crossing over, under or affecting any watercourse or drainage ditch on, over or under BPC's property or which drains water to or from BPC's property; and

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(b) to make any opening or connection into any watercourse belonging to BPC or to lay down, take up or alter any pipes for that purpose;

“environmental protection works” means measures reasonably required to be carried out on or in respect of Work No. 18 to protect the scrub environment and water bodies established and managed by BPC;

“highway access land” means any and all of parcels 5/30, 5/61, 5/62, 5/65 and 5/70;

“maintainable highway” has the same meaning as in section 86(1) (highway authorities, highways and related matters) of the 1991 Act;

“Marsh Lane track” means the private street referred to in Schedule 3 (streets subject to street works) and therein described as Access Road to the M5 Avonmouth Bridge east of Marsh Lane, Easton-in-Gordano;

“Marsh Lane track land” means any and all of parcels 5/25, 5/95, 5/100, 5/105, 5/106, 5/112 and 5/113 and that part of parcel 5/28 which lies to the east of an imaginary line projected in a northerly direction across the disused railway line at 126 miles 78 chains and includes the Marsh Lane track;

“plans” includes sections, elevations, designs and design data, drawings, calculations, specifications, programmes, method statements, assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work;

“Port” means the port and harbour of Bristol;

“Port’s railway” means the railway owned by BPC leading from Portbury Junction, Pill to the Royal Portbury Dock;

“powers of temporary possession” means the powers conferred by article 33 (temporary use of land for carrying out the authorised development);

“preparatory activities” means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works but excluding any such activities carried out under article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC’s property;

“private street” means any street on BPC’s property which is not a maintainable highway;

“public path land” means any and all of parcels 5/27, 5/101, 5/102, 5/130, 5/131, 5/135 and 5/136;

“rail link land” means any and all of parcels 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55;

“railway rights land” means any and all of parcels 5/95, 5/100, 5/105, 5/122, 5/137, 5/140, 5/141, 6/10, 6/15, 6/20 6/55, 6/60 and 6/80;

“relevant works” means that part of Work 1C that is on the Port’s railway and Work Nos. 14, 14A, 14B, 15, 16, 16A, 16C, 18, 19 and 20;

“specified work” means—

- (a) that part of Work No. 1C that is on the Port’s railway;
- (b) the whole of Work Nos. 14, 14A, 15, 16, 16A, 16C, 18, 19 and 20;
- (c) all access works and drainage works; and
- (d) so much of all other parts of the authorised development and of any works to be carried out under the powers conferred by article 33 as is situated upon, across, under, over or within 5 metres of BPC’s property, including all environmental mitigation and restoration measures;

(2) In this Part of this Schedule—

- (a) references to the undertaker include references to any person to or in which any or all of the benefit of the provisions of this Order and any related statutory powers are transferred or are vested pursuant to any provision of this Order and any person which may by virtue of any agreement made pursuant to article 11 (agreements with Network Rail) whether alone or jointly with another exercise any or all of the powers contained in this Order;
- (b) references to numbered parcels are to the parcels of land so numbered in the book of reference;
- (c) references to a requirement to consult include that consultation must take place in good faith and in a timely manner with the provision of all reasonably necessary information and so that the party concerned must act reasonably in taking into account the reasonable comments made by the other party in response; and
- (d) references to BPC’s consent, agreement or approval are to BPC’s prior consent, agreement or approval given in writing.

**44.** Nothing in this Order affects—

- (a) any right of BPC to use the Court House Farm terminable access; or
- (b) the provisions of the Court House Farm easement or any other agreement relating to the Court House Farm terminable access,

and accordingly the following provisions of this Part of this Schedule do not apply as regards the Court House Farm terminable access.

**45.** The undertaker must give written notice to BPC if any application is proposed to be made by the undertaker for the Secretary of State’s consent under article 10 (consent to transfer of benefit of order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

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

**46.—**(1) No agreement made under article 11 (agreements with Network Rail) may authorise or permit the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of any powers and rights of Network Rail and the undertaker (as the case may be) under any BPC contract or affecting any of BPC’s property.

(2) In sub-paragraph (1), “BPC contract” means all and any contracts, licences, easements and other agreements, permissions and consents to which BPC is a party or of which it has the benefit.

### **Watercourses and drainage**

**47.—**(1) No part of any impounded dock at the Port is included within the definition of “watercourse” for any purpose of this Order.

(2) The undertaker must not without BPC’s consent (such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions) create any new discharges for water into any watercourse belonging to or used by BPC.

(3) Without limitation on the scope of sub-paragraph (2), any consent given by BPC under this paragraph—

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- (a) may be given subject to reasonable conditions as to the quantities of water permitted to be discharged and as to the duration of any use of the relevant watercourse by the undertaker; and
  - (b) does not obviate the need for the undertaker to obtain any further consents required in relation to the activity concerned.
- (4) In the exercise of any power under article 22 (discharge of water), the undertaker must not damage or interfere with the bed or banks of any watercourse in, on, over or under BPC's property.

### **Surveys**

**48.**—(1) The undertaker must not exercise the powers conferred by article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property—

- (a) outside the Order limits except to the extent that BPC agrees for the purpose of carrying out non-intrusive surveys, investigations and monitoring only;
- (b) other than to the extent that the exercise of such powers is necessary in connection with carrying out the authorised development; and
- (c) other than by prior agreement with BPC on each and every occasion, such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions, and on at least 14 days' notice.

(2) When requesting BPC's agreement to access under sub-paragraph (1) the undertaker must provide to BPC full details of the property to which access is requested, the activities proposed (including risk assessments and method statements and intended duration of the activities), the identity of the persons who would undertake them and any apparatus that might be left on the affected property.

(3) BPC is, without limitation on the scope of sub-paragraph (1)(c)—

- (a) entitled to refuse access as requested by the undertaker on any occasion for operational reasons, in which case BPC must act reasonably and without delay in seeking to offer alternative arrangements; and
- (b) entitled as a condition of its agreement on any occasion to require the production of evidence of the existence of adequate insurance with insurers of repute, the proceeds of which will be available to cover all liability, costs, claims, expenses and demands which may arise as a result of that access.

(4) The undertaker must remove any equipment left on, over or under BPC's property as soon as reasonably possible after completion of the relevant surveys and investigations.

(5) The undertaker must, at its own expense, deliver to BPC as soon as reasonably practicable after their production on a non-reliance basis copies in an electronic format of all survey and ground investigation reports carried out in respect of BPC's property under the powers conferred by article 23 or the powers conferred by section 11(3) of the 1965 Act as applied by this Order, which reports BPC may use and provide to others (on a non-reliance basis) free of cost in connection with works and operations at the Port.

### **Streets, access and public rights of way**

**49.**—(1) The undertaker must not in carrying out any works or exercising the powers conferred by this Order cause pedestrian or vehicular access to or across any of BPC's property (including access for cargo operations but excluding access over the Court House Farm terminable access) to be interfered with or obstructed, other than with the consent of BPC, not to be unreasonably withheld



or delayed, or, if the carrying out of works or exercising the powers relate to a dock public road, unless the undertaker has first consulted with BPC.

(2) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under—

- (a) article 13(1) (street works and power to alter layout etc., of streets) in respect of or so as to affect the Marsh Lane track other than by prior agreement with BPC such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions;
- (b) article 13(1) in respect of or so as to affect any dock public road unless it has first consulted with BPC; or
- (c) article 13(2) in respect of or so as to affect any private street on any part of BPC's property.

(3) With the exception of the locations specified in columns (1) and (2) of Schedule 7 (access to works) and shown on sheet 5 of the compounds, haul roads and access to works plan as AW5.1 (access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch railway line) and AW5.3 (access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch railway line) the undertaker must not pursuant to any powers in this Order carry out any works to create or improve any means of access affecting any private street or any public right of way on BPC's property or any other part of BPC's property or any dock public road.

(4) In carrying out any access works, the undertaker must not so far as reasonably practicable interfere with or obstruct the free, uninterrupted and safe use by other traffic of any street or interfere with street furniture, signage and lighting masts.

(5) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under article 15(1) (temporary stopping up of streets and public rights of way) in respect of—

- (a) the Marsh Lane track (except to the extent permitted by article 15(5)) or any other private street; or
- (b) Royal Portbury Dock Road without BPC's consent, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.

(6) Despite any provision in this Order, the undertaker must not, except with the agreement of BPC, exercise any power under article 15 or article 46 (traffic regulation) to use or to authorise the use of any private street or any dock public road or any public right of way on BPC's property as a temporary working site or as a parking place.

(7) The undertaker must exercise the power granted to it under paragraph (5) of article 15 to stop up public rights of way LA8/67/10 and LA/8/68/10 to the extent specified in column (3) of Part 2 of Schedule 5 (bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension), throughout the period of operation or use of the Lodway Farm construction compound to be constructed as Work No. 17 and the temporary construction compound located under the M5 Avonmouth Bridge.

(8) The undertaker must, before submitting any survey, proposed measures or strategy relating to the Marsh Lane track to the relevant planning authority for approval in accordance with requirement 35 (requirement for written approval) of Schedule 2 (requirements), consult with BPC in relation to the content of all such surveys, measures and strategies.

(9) Despite paragraphs (1) and (2) of article 19 (construction and maintenance of new or altered streets)—

- (a) any street constructed under this Order on BPC's property; and
- (b) the altered or diverted part of any street altered or diverted under this Order on BPC's property

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must be maintained by and at the expense of the relevant highway authority at all times from its completion.

(10) If the undertaker acquires, whether compulsorily or by agreement, any of BPC's property within the Order limits, or any right or interest in or over such property, which property is subject to a public right of way, from the date of the acquisition of the relevant land, right or interest or from the date of entry onto the land by the undertaker under section 11(1) (power of entry) of the 1965 Act, whichever is the earlier, any liability or responsibility of BPC to the relevant highway authority for or in respect of the maintenance of that public right of way is extinguished and that public right of way shall after that date instead be maintained by and at the expense of the relevant highway authority.

(11) Without limitation on the scope of any other provision in this Part if any damage to any public right of way on BPC's property is caused in the exercise of any powers under this Order or by the carrying out of, or in consequence of the construction of, any works under this Order, the undertaker must make good such damage and pay to BPC all reasonable expenses to which BPC may be put by reason of any such damage.

(12) The undertaker must not exercise any powers under article 13, article 15 or article 46 over or in respect of any part of BPC's property or any dock public road after completion of construction of the authorised development.

(13) Despite any other provision of this Order, no part of Work No. 16 or Work No. 18 (including the right of way to be constructed by the undertaker pursuant to article 16(3) and described in Part 2 of Schedule 6 (bridleways, cycle tracks and footpaths) as a bridleway between points B1 and B2 shown on Sheet 5 of the new highways plan) is or will become open for use by any person or a public right of way or other highway except with the agreement of BPC.

### **Acquisition and use of land**

**50.**—(1) The undertaker must not exercise the powers conferred by section 271 (extinguishment of rights of statutory undertakers: preliminary notices) of the 1990 Act in relation to any rights of BPC over or in respect of the railway rights land or the highways access land; or any of BPC's apparatus.

(2) Despite any other provisions of this Order, if the undertaker acquires any interest in the railway rights land or the highways access land, whether compulsorily or by agreement, no rights of BPC over or in respect of the railway rights land or the highway access land so acquired must be extinguished.

(3) The undertaker must not exercise the powers conferred by—

- (a) article 24 (compulsory acquisition of land) or article 31 (acquisition of subsoil or airspace only) over or in respect of the public path land or any part of parcel 5/50 which is not part of the embankment supporting Marsh Lane;
- (b) article 27(1) (compulsory acquisition of rights or imposition of covenants) over or in respect of the rail link land or any parcels 5/75, 5/103 and 5/112;
- (c) article 27(2) over or in respect of any of BPC's property;
- (d) article 32 (rights under or over streets) over or in respect of any private street; or
- (e) article 34 (temporary use of land for maintaining the authorised development) over or in respect of any of BPC's property,

unless the exercise of such powers is with the consent of BPC.

(4) Except to the extent BPC may agree, article 28(3) (private rights over land subject to compulsory acquisition or temporary possession), article 29 (power to override easements and other rights) and article 37 (statutory undertakers and electronic communications code network operators) is not to apply in relation to any interest, right or restriction, the benefit of which is vested in or enjoyed by BPC affecting the rail link land or the Marsh Lane track land.

## **Use of land and execution, maintenance and use of the authorised development**

**51.**—(1) Despite any provision in this Order or anything shown on the land plan, the undertaker must not except with the agreement of BPC—

- (a) exercise any powers of temporary possession over or in respect of parcel 5/75 or (if and to the extent they form part of BPC’s property) parcel 5/85 or parcel 5/86 unless BPC fails, within 14 days of a request by the undertaker, to make available for exercise by the undertaker in substitution for the exercise of the relevant powers temporary rights of access over other land which are sufficient (whether alone or in conjunction with the exercise by the undertaker of other powers under this Order) to enable the undertaker to gain access in connection with the construction of the authorised development, with such vehicles, plant and equipment as may be necessary, from access point AW5.3 shown on the compounds, haul roads and access to works plan to the accommodation bridge (and associated walls, embankments and structures) on land adjacent to parcel 05/86 and to the culvert, watercourse and head wall situated on land adjacent to parcel 05/85;
- (b) other than any construction access rights which may be authorised by or pursuant to the terms of this Order over the Marsh Lane track, the rail link land or parcel 05/75, or over bridleways and footpaths that are open to the public, exercise any construction access rights over BPC’s property or otherwise use any part of BPC’s property for the purpose of gaining access to any part of the authorised development or to any other land or in connection with the construction or maintenance of the authorised development; or
- (c) exercise any powers of temporary possession over or in respect of the Marsh Lane track land or the rail link land or parcels 5/103 and 5/170.

(2) Any exercise of powers of temporary possession by the undertaker in respect of the rail link land or the Marsh Lane track land which may be permitted pursuant to the terms of this Order is subject to, and in common with, the use of the rail link land and the Marsh Lane track land by BPC and by any other person acting with BPC’s authority or which may have rights to use the rail link land and the Marsh Lane track land.

**52.**—(1) If required to do so by BPC (acting reasonably), the undertaker must at its cost and expense procure that surveys are carried out to a specification approved by BPC (acting reasonably) to show the condition of any land of which temporary possession is taken under article 33 (together with all associated structures) before the undertaker’s use of it begins and after that use ends.

(2) The undertaker must promptly after receipt of reasonable demand by BPC and at the undertaker’s cost and expense make good any and all damage and wear and tear caused to any part of BPC’s property which is used by the undertaker in connection with the construction or maintenance of the authorised development where in BPC’s reasonable opinion the rectification of such damage, wear or tear is necessary in the interests of safety or security.

(3) If required to do so by BPC (acting reasonably), the undertaker must permit BPC to inspect the execution of all works of rectification being carried out under this paragraph in order to ensure compliance by the undertaker with the requirements of this paragraph.

**53.**—(1) The undertaker must present to BPC not less than three months before the intended date of commencing construction the draft programme for the execution of each part of the authorised development on BPC’s property.

(2) The undertaker must consult with BPC in relation to the draft programme and must present its final programme for the execution of the authorised development on BPC’s property to BPC not less than four weeks before the intended date of commencing construction.

(3) The undertaker must not enter on or take temporary possession of any part of BPC’s property unless it has served at least 14 days’ written notice on BPC of its intended entry onto that part.

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(4) In this paragraph “intended date of commencing construction” means the first date on which the undertaker wishes to commence construction of any part of the authorised development on, under or over any part of BPC’s property, including carrying out any preparatory activities.

(5) In the exercise of any powers of temporary possession in respect of any part of BPC’s property and in the commencement and execution of the authorised development on BPC’s property the undertaker must—

- (a) proceed diligently with the works affecting each part of BPC’s property; and
- (b) notify BPC in writing of the completion of the relevant part of the authorised development affecting each part of BPC’s property within fourteen days of its completion.

(6) In the exercise of any powers of temporary possession in respect of any part of BPC’s property the undertaker must not—

- (a) except with the agreement of BPC, provide or authorise the provision of car parking or storage (for materials or other items) facilities on any part of BPC’s property other than within Work No. 16A;
- (b) demolish or remove any buildings; or
- (c) except as BPC agrees, construct or carry out on BPC’s property any works comprising fencing, any mitigation works, ground or rock stability, geotechnical or strengthening works other than works which are of a temporary nature.

(7) In addition to and without limitation on the scope of the undertaker’s other obligations under this Order (including those in article 33(4) and Schedule 2), before giving up possession of any part of BPC’s property in respect of which any powers of temporary possession have been exercised the undertaker must remove any works constructed in contravention of sub-paragraph (6) or paragraph 54.

## **Works**

**54.** Despite any provision of this Order or anything shown on the certified documents except as BPC may agree—

- (a) no part of Work No. 14 or any ancillary works associated with Work No. 14 must be constructed or maintained on parcel 04/55; and
- (b) other than works of a temporary nature, no ancillary works associated with any relevant works or with Work No. 1A or Work No. 1B must be constructed or maintained upon, across, under or over BPC’s property of which only temporary possession is taken under this Order or over which the undertaker does not, under this Order, acquire rights authorising the retention of those ancillary works.

**55.—**(1) The undertaker must before commencing construction of any specified work supply to BPC proper and sufficient plans of that work for BPC’s approval and the specified work must not be commenced or executed except in accordance with such plans as have been approved in writing by BPC.

(2) Subject to sub-paragraph (3), BPC’s approval under sub-paragraph (1) must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions.

(3) BPC’s approval to plans must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions—

- (a) in respect of all or any of Work No. 1C on BPC’s property and Work No. 19, if and in so far as the proposed works comprise and, following design development, are broadly consistent with the works shown on drawings W1097B-ARP-DRG-ECV-000305, W1097B-ARP-DRG-ECV-000330 and W1097B-ARP-DRG-ECV-000331;

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- (b) in respect of Work No. 18 if and in so far as the proposed works comprise and, following design development, are broadly consistent with the Bridleway Extension Under the Elevated M5 Plan, and
- (c) in respect of Work No. 16C, if and in so far as the proposed works comprise only work necessary to renew the level crossing in modern equivalent form.

(4) Where under sub-paragraph (2) or (3) BPC's approval to plans submitted by the undertaker under sub-paragraph (1) cannot be unreasonably withheld or delayed if by the end of the period of 28 days beginning with the date on which such plans have been supplied to BPC, BPC has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon BPC written notice requiring BPC to intimate approval or disapproval within a further period of 28 days beginning with the date upon which BPC receives written notice from the undertaker. If by expiry of the further period of 28 days BPC has not intimated approval or disapproval, BPC is deemed to have approved the plans as submitted.

(5) When signifying approval of plans submitted under sub-paragraph (1), BPC may specify any protective works (whether temporary or permanent) which in BPC's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of BPC's property or the continuation of safe and efficient operation of the Port (including the Port's railway) and such protective works as may be reasonably necessary for those purposes are to be constructed by BPC but at the expense of the undertaker, or if BPC so desires such protective works must be carried out by the undertaker at its own expense with all reasonable dispatch, and the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that the protective works have been completed to BPC's reasonable satisfaction.

(6) When signifying approval of plans submitted under sub-paragraph (1) in relation to Work No. 18, BPC may specify any environmental protection works which in BPC's reasonable opinion should be implemented before the commencement of, or during, the construction of Work No. 18 and such environmental protection works as may be reasonably necessary for those purposes are to be implemented by BPC but at the expense of the undertaker, or if BPC so desires such environmental protection works must be implemented by the undertaker at its own expense with all reasonable dispatch, and except to the extent BPC may agree the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that any and all relevant environmental protection works have been implemented to BPC's reasonable satisfaction.

**56.—**(1) Any specified work and any protective works (and any environmental protection works connected with Work No. 18) to be constructed or implemented by virtue of paragraph 55(5) or 55(6) must, when commenced, be constructed and implemented with all reasonable dispatch in accordance with the plans approved or deemed to have been approved under paragraph 55—

- (a) under BPC's supervision (where appropriate and if given) and to BPC's reasonable satisfaction;
- (b) in such manner as to cause as little damage as is possible to BPC's property; and
- (c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe and efficient operation of the Port (including use of the Port's railway or the traffic on it).

(2) If any damage to BPC's property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker must, regardless of any approval described in paragraph 55(1), make good such damage and pay to BPC all reasonable expenses to which BPC may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

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- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of BPC or its servants, contractors or agents; or
- (b) any liability on BPC with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**57.** The undertaker must—

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

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

**59.—**(1) If any permanent or temporary alterations or additions to BPC’s property, or any protective works under paragraph 55(5), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised development that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by BPC and if BPC gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker must pay to BPC all costs reasonably and properly incurred in constructing 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 BPC in maintaining, working and, when necessary, renewing any such alterations or additions.

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

**60.** The undertaker must repay to BPC all fees, costs, charges and expenses reasonably and properly incurred by BPC—

- (a) in constructing any protective works under the provisions of paragraph 55(5) and in the implementing of any environmental protection works under the provisions of paragraph 55(6) including, in respect of any permanent protective works or permanent environmental protection works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of BPC’s representative’s approval of plans submitted by the undertaker and the supervision by BPC of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part;
- (c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting, watching and lighting BPC’s property (including the Port’s railway) 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; and
- (d) in respect of any additional temporary lighting of BPC’s property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work.

**61.** If at any time after the completion of a specified work BPC 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 or use of any of BPC's property (including the Port's railway) in connection with carrying on BPC's statutory undertaking, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not to adversely affect the operation or use of such property in that connection.

**62.** Any additional expenses which BPC may reasonably incur in altering, reconstructing, working, or maintaining under any powers existing at the making of this Order any of BPC's property in connection with carrying on BPC's statutory undertaking by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, working or maintenance has been given to the undertaker, are to be repaid by the undertaker to BPC.

**63.**—(1) The undertaker must pay to BPC all costs, charges, damages and expenses not otherwise provided for in this Part (but subject to article 41 (no double recovery)) which may be occasioned to or reasonably and properly incurred by BPC—

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

and the undertaker must indemnify BPC from and against all costs, 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 BPC on behalf of the undertaker or in accordance with plans approved by BPC or in accordance with any requirement of BPC's representative or under BPC's representative's supervision will not (if it was done without negligence on the part of BPC 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) BPC must give the undertaker reasonable notice of any such claim or demand made by a third party as soon as reasonably practicable after BPC becomes aware of it and must make no settlement or compromise of such a claim or demand in excess of £10,000 without the prior consent of the undertaker (such consent not to be unreasonably withheld or delayed).

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

**65.** In the assessment of any sums payable to BPC under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by BPC 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.

### **BPC's apparatus**

**66.** Despite any provision of this Order or anything shown on the land plan—

- (a) the undertaker must not acquire any of BPC's apparatus other than by agreement;
- (b) any right of BPC to maintain and use any of BPC's apparatus in land must not be extinguished, suspended or interfered with other than with BPC's agreement; and
- (c) the undertaker must not alter, divert, remove, replace, reposition, relocate or repair any of BPC's apparatus other than with BPC's consent (not to be unreasonably withheld or delayed in respect of any specified work).

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### **The Port's railway**

**67.** For the purpose of this Order—

- (a) no part of the Port's railway is, or will become by virtue of this Order or the execution of the authorised development, existing operational railway or operational railway; and
- (b) no part of BPC's property or of any other land over which the Port's railway is located (whether or not that land is owned by BPC) is, or will become by virtue of this Order or the execution of the authorised development, operational railway land or currently operational railway land or form part of the railway authorised by this Order to which article 39 (operation and use of railways) applies.

### **Trees and other vegetation**

**68.** Despite any provision in this Order and anything shown on the certified documents, in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development the undertaker must not—

- (a) plant new or replacement trees, hedges, hedgerows, shrubs or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed; or
- (b) remove, cut back, fell or lop, prune or reduce in any way any other hedge, tree, shrub or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed.

### **General**

**69.** The undertaker must in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development secure compliance with and implementation of all and any applicable conditions attached to any relevant consent, agreement or approval given by BPC for the purpose of this Part.

**70.** Article 49 (procedure in relation to further approvals, etc) will not apply in relation to any consent, agreement or approval from BPC required under this Order.

## **PART 6**

### **Protection for Exolum Pipeline System Ltd**

**71.** The provisions of this Part have effect for the protection of the Exolum undertaker referred to in this Part unless otherwise agreed in writing between the undertaker and the Exolum undertaker.

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

“alternative apparatus” means alternative apparatus adequate to enable the Exolum undertaker to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means the pipeline, or any part of it, belonging to or maintained by the Exolum undertaker, which is within the Order limits, and includes any structure in which that apparatus is or is to be lodged or which gives or will give access to apparatus;

“Exolum undertaker” means Exolum Pipeline System Ltd (registered company number 09497223) or any successor in title to the Exolum undertaker in respect of the apparatus;

“functions” includes powers and duties; and

“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.



73. Despite any provision of this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

74.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which the apparatus is placed, that apparatus must not be removed under this Part and any right of the Exolum 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 Exolum undertaker.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the Exolum undertaker written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed in the land referred to in sub-paragraph (2), the Exolum 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 other land in which the alternative apparatus is to be constructed.

(4) The Exolum undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56 (arbitration), and after the grant to the Exolum undertaker of any such facilities and rights as are referred to in sub-paragraph (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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the Exolum undertaker that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the Exolum undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the Exolum undertaker.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

75.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 74(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, the undertaker must submit to the Exolum undertaker a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the Exolum undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the Exolum undertaker is entitled to watch and inspect the execution of those works.

(3) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of the apparatus or (wherever situated) will impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the information to be submitted to the Exolum undertaker under paragraph 75(1) shall be submitted not less than 35 days before the works are started and shall include a method statement describing—

- (a) the exact position of the works;
- (b) the level at which the works are to be constructed or renewed;
- (c) the manner of their construction or renewal;

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(d) the position of the apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to the apparatus,

to permit the Exolum undertaker to assess whether any protective works or monitoring of adjoining activities or works are necessary, acting reasonably.

(4) Any requirements made by the Exolum undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) re-submitted to it.

(5) If the Exolum undertaker in accordance with sub-paragraph (4) 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, paragraph 74 applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph (2) of that paragraph.

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

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the Exolum undertaker notice as soon as is reasonably practicable and a plan, section and description of the works referred to in sub-paragraph (1) as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) and sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(8) Where, in the reasonable opinion of the Exolum undertaker or the undertaker, anything done in the exercise of the powers conferred by this Order might interfere with the cathodic protection forming part of apparatus or any apparatus might interfere with the proposed or existing cathodic protection forming part of the undertaker's works, the Exolum undertaker and the undertaker must co-operate in carrying out any tests which they consider reasonably necessary for ascertaining the nature and extent of such interference, and measures reasonably necessary for providing or preserving such cathodic protection.

**76.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to the Exolum undertaker the proper and reasonable expenses reasonably incurred by the Exolum undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus including those expenses incurred through stopping and restoring supply to the apparatus.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

**77.—**(1) 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, 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 56 (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 Exolum undertaker by virtue of paragraph 76(1) is to be reduced by the amount of that excess.

(2) For the purposes of sub-paragraph (1), the extension of the apparatus to a length greater than the length of the existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.

(3) An amount which apart from this sub-paragraph would be payable to the Exolum undertaker in respect of works by virtue of paragraph 76(1) 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 Exolum undertaker 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.

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

## PART 7

For the protection of Western Power Distribution Limited (South West) Plc

### Application

**79.** For the protection of Western Power Distribution Limited (South West) plc as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Western Power Distribution Limited (South West) plc.

### Interpretation

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

“alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously;

“alternative rights” means all and any necessary legal easements, consents, or permissions required by WPD in order to permit or authorise a diversion;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989<sup>(88)</sup>, belonging to or maintained by WPD;

“diversion” means an alteration to the WPD network in order to enable or facilitate the authorised development;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” or “plans” includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

“WPD” means Western Power Distribution (South West) plc (company number 02366894) whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB;

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<sup>(88)</sup> 1989 c. 29.

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“WPD network” means WPD’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 (licences authorising supply, etc.) of the Electricity Act 1989; and

for the avoidance of doubt, all other terms as defined in article 2 (interpretation) of this Order.

### **Precedence of 1991 Act in respect of apparatus in streets**

**81.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and WPD are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

### **No acquisition or extinguishment except by agreement**

**82.** 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**

**83.—**(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 WPD’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation and access to it has been provided if necessary to the reasonable satisfaction of WPD in accordance with sub-paragraphs (2) to (11).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WPD written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order WPD reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (2)(a), (b) and (c), afford to WPD the necessary facilities and rights for the construction of alternative apparatus in other land owned or controlled by the undertaker and subsequently for the maintenance of that apparatus—

- (a) if, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker shall use its reasonable endeavours to obtain alternative rights in other land in which the alternative apparatus is to be constructed;
- (b) should the undertaker not be able to obtain the alternative rights required under paragraph (a) then the undertaker and WPD shall use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights;
- (c) if alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker and the undertaker is unable to afford such facilities and rights as are mentioned in paragraph (a) and an alternative engineering solution cannot be agreed in accordance with paragraph (b), WPD must on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be

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constructed save that this obligation shall not extend to a requirement on WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

(3) Any alternative apparatus required pursuant to sub-paragraph (2) must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 86.

(4) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 86, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph (2), 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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to WPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WPD, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

(7) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 86.

(8) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted.

(9) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the expert less favourable on the whole to WPD than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to WPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

(10) If in accordance with the provisions of this Part of this Schedule WPD require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WPD's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development WPD must deduct the cost of such additional requirements from the amount payable by the undertaker pursuant to paragraph 85(1).

(11) For the purposes of sub-paragraph (10)—

- (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

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- (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.

**84.**—(1) Not less than 28 days before the undertaker intends to start the execution of any specified work, the undertaker must submit to WPD a plan, section and description of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3).

(2) Subject to sub-paragraph (3) the undertaker must not commence any works to which sub-paragraph (1) applies until WPD has given written approval of the plan so submitted, and identified any reasonable requirements it has in relation to the carrying out of the works such approval not to be unreasonably withheld or delayed.

(3) If by the expiry of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted WPD has not advised the undertaker in writing of its approval or disapproval of the plans and any reasonable requirements for the alteration or otherwise for the protection of the apparatus, or for securing access to it, it shall be deemed to have approved the plans, sections or descriptions as submitted.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by WPD and WPD is entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker must comply with WPD's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Edition) (2014) as the same may be replaced from time to time.

(6) If WPD, in accordance with sub-paragraph (2) 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 subject to sub-paragraph (3), paragraphs 83(1) to (6) apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 83(2).

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

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

### **Expenses and costs**

**85.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any alternative apparatus arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of any specified work, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD the undertaker is to—

- (a) bear and pay the cost reasonably incurred by WPD in making good such damage or restoring the supply; and
  - (b) reimburse WPD for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by WPD of such damage, by reason or in consequence of any such damage or interruption.
- (3) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of WPD, its officers, servants, contractors or agents.
- (4) WPD must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- (5) WPD shall not be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

### **Expert determination**

**86.**—(1) Article 56 (arbitration) applies to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 14 days of receipt of the submission;
- (c) issue a decision within 28 days of receipt of the submissions under sub-paragraph (5)(a); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (e) any other important and relevant consideration.

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(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 56.

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

**88.** The provisions of Part 2 of this Schedule do not apply in relation to WPD or any apparatus of WPD.

## PART 8

### For the protection of National Grid as electricity undertaker

#### Application

**89.** For the protection of National Grid the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and National Grid.

#### Interpretation

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

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

“2016 Order” means the National Grid (Hinkley Point C Connection Project) Order 2016 as amended;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable it to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;



“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission plc (registered company number 02366977);

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any existing apparatus the removal of which has not been required by the undertaker under paragraph 93(2) or otherwise; and/or
- (b) may in any way adversely affect any existing apparatus the removal of which has not been required by the undertaker under paragraph 95(3) or otherwise;

“undertaker” means the undertaker as defined in article 2 of this Order.

**91.** Except for paragraphs 94 (apparatus of National Grid in stopped up streets), 98 (retained apparatus), 99 (expenses) and 100 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

**92.** The provisions of Part 2 of this Schedule do not apply in relation to National Grid or any apparatus of National Grid.

**93.—(1)** The undertaker and National Grid will co-operate and work together to secure that the works proposed to be carried out by National Grid under the powers of the 2016 Order and the authorised works to be carried out by the undertaker under this Order will so far as reasonably possible be programmed, and arrangements for the carrying out, use and maintenance of those works will be made, so as, so far as reasonably possible, to avoid undue delay or any conflict arising between the carrying out, use and maintenance of those proposed works and carrying out, use and maintenance of the authorised development.

(2) Any consent, agreement or approval by National Grid or the undertaker under this Part of this Schedule must not be unreasonably withheld or delayed.

#### **Apparatus of National Grid in stopped up streets**

**94.—(1)** Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 14 (permanent stopping up of

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streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to National Grid, or will procure the granting to National Grid of, legal easements reasonably satisfactory to it in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (temporary stopping up of streets and public rights of way), National Grid will be at liberty at all times to take all necessary access across any such stopped up highway and/or 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.

### **Acquisition of land**

**95.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire or extinguish any land interest or apparatus or override any easement and/or other interest of National Grid, including any rights contained in the 2016 Order, otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 98 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under paragraph 95(1).

### **Removal of existing apparatus**

**96.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 95 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed or requires that National Grid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of National Grid 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 National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 97(1)) the necessary facilities and rights for the construction of alternative apparatus in other land of or land secured by 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 or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, as soon as is reasonably possible and on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (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.

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

**97.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid 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 matter will be referred to arbitration in accordance with paragraph 104 (arbitration) and the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**98.—**(1) Not less than 56 days before the commencement of any specified works that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 96(2) or otherwise, the undertaker must submit to National Grid a plan of the works

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to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to specified works which will or may be situated on, over, under or within 15 metres measured in any direction of any existing apparatus, or involve embankment works within 15 metres of any existing apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any existing apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from

time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any existing apparatus and gives written notice to the undertaker of that requirement, paragraphs 89 to 91 and 95 to 97 apply as if the removal of the apparatus had been required by the undertaker under paragraph 96(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**99.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 96(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

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- (d) the approval of plans;
  - (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
  - (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.
- (2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.
- (3) If in accordance with the provisions of this Part of this Schedule—
- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,
- and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 56 (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 National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.
- (4) For the purposes of sub-paragraph (3)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
  - (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.
- (5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### **Indemnity**

**100.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service

provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

**101.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**102.** Where in consequence of the proposed construction of any of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 96(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 98, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

### **Access**

**103.** If in consequence of the agreement reached in accordance with paragraph 95(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**104.** Any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 56 (arbitration).

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## Notices

**105.** The plans submitted to National Grid by the undertaker pursuant to paragraph 98 must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PART 9

### For the protection of Wales and West Utilities (“WWU”)

**106.** For the protection of WWU in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and WWU, have effect.

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

“alternative apparatus” means alternative apparatus adequate to enable WWU to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by WWU for the purposes of gas supply 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; and

“WWU” means Wales & West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ, a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(89)</sup>.

**108.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and WWU are regulated by the provisions of Part 3 of the 1991 Act.

**109.** 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.

**110.—**(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, that apparatus must not be removed under this Part of this Schedule and any right of WWU 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 WWU.

(2) If, for the purpose of executing any works authorised by this Order in, on, over, or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WWU written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order WWU reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to WWU 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

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<sup>(89)</sup> 1986 c. 44. 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).



are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, WWU must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, or agree with the undertaker an alternative route for the alternative apparatus over land in respect of which it is possible for the undertaker to obtain the relevant facilities and rights. For the avoidance of doubt, WWU shall not be obliged to exercise its compulsory purchase powers pursuant to the Gas Act 1986 in order to obtain any such facilities or rights and WWU shall retain an absolute discretion as to whether it shall choose to exercise those powers.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between WWU and the undertaker, or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) WWU must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as referred to in sub-paragraph (4) in accordance with article 56 (arbitration), and after the grant to WWU of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed as soon as reasonably practicable 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 WWU that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WWU, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WWU.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**111.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WWU 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 WWU or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of the undertaker, the arbitrator must—

- (a) give effect to all reasonable requirements of Network Rail and the undertaker for ensuring the safety and efficient operation of the railway which forms or is to form part of Network Rail's network and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the undertaker or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to WWU 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 WWU as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

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**112.**—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 110(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 110(2), the undertaker must submit to WWU a plan, section and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by WWU for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and WWU is entitled to watch and inspect the execution of those works.

(3) Any requirements made by WWU under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If WWU 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 106 to 110 apply as if the removal of the apparatus had been required by the undertaker under paragraph 110(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case it must give to WWU notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable if possible before carrying out those works, or if not, as soon as reasonably practicable afterwards and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) For the avoidance of doubt, whenever the undertaker carries out any works in the vicinity of any apparatus of WWU and whether or not WWU has made any requirements pursuant to sub-paragraph (2) above, the undertaker must comply with—

- (a) all applicable health and safety laws, including the Construction (Design and Management) Regulations 2015;
- (b) the Pipeline Safety Regulations 1996; and
- (c) the safety guidance published from time to time by WWU and the HSE.

**113.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to WWU the reasonable expenses incurred by WWU in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including: costs or compensation payable in connection with the acquisition of land for that purpose; and any reasonable legal or other professional costs properly incurred relating to any such works to apparatus, or to the provision of alternative apparatus) which may be required in consequence of the execution of any such works as are referred to in paragraph 110(2).

(2) If in accordance with the provisions of this Part of this Schedule WWU require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WWU's requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development WWU must deduct the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

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(3) For the purposes of sub-paragraph (2) 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.

(4) For the avoidance of doubt and subject to paragraph 108, the provisions of sub-paragraph (1) require the undertaker to repay the full costs of any works carried out to WWU's apparatus, or in order to protect that apparatus, or in consequence of any works carried out in the vicinity of that apparatus by the undertaker.

**114.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 110(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WWU, or there is any interruption in any service provided, or in the supply of any goods, by WWU, the undertaker must—

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

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 WWU, its officers, servants, contractors or agents.

(3) WWU must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

**116.** The provisions of Part 2 of this Schedule do not apply in relation to WWU or any apparatus of WWU.

## PART 10

### For the protection of the National Trust

**117.**—(1) The provisions of this Part of this Schedule have effect for the protection of the Trust unless otherwise agreed in writing between the undertaker and the Trust.

(2) In this Part of this Schedule—

“activities” means vegetation clearance, removal of loose rocks, rock scaling, insertion of rock bolts and erecting catch fences and associated stays, cables and anchors;

“construction” includes execution, placing, erecting and insertion, and “construct” and “constructed” have corresponding meanings;

“emergency” means a situation which—

- (a) is unexpected, in that there is little or no warning, or aspects of the event could not have reasonably been predicted in advance;

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- (b) is a serious event presenting a risk of harm or damage to people, property or the environment; and
- (c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work and details of the extent, timing and duration of any proposed occupation of property belonging to the Trust for the purpose of engaging in the activities;

“Quarry Bridge 2 works” means the reconstruction of the accommodation bridge under the railway at 122 miles 74 chains providing access to the property of the Trust;

“the Trust” means The National Trust for Places of Historic Interest or Natural Beauty (Registered Charity 205846); and

“Trust property” means any property belonging to the Trust.

### **Powers of compulsory acquisition**

**118.** The powers of article 27 (compulsory acquisition of rights or imposition of covenants) and article 31 (acquisition of subsoil or airspace only) may only be exercised in relation to Trust property with the consent of the Trust.

### **Works provisions**

**119.—**(1) The undertaker must before commencing activities on Trust property or the Quarry Bridge 2 works under the powers of this Order supply to the Trust proper and sufficient plans and method statements for the proposed activities for the reasonable approval of the Trust and the activities must not be commenced except in accordance with such plans and method statements as have been approved in writing by the Trust or settled in accordance with paragraph 126.

(2) The approval of the Trust under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to the Trust the Trust has not indicated its disapproval of those plans and the grounds of disapproval the undertaker may serve upon the Trust written notice requiring the Trust to intimate its approval or disapproval within a further period of 14 days beginning with the date upon which the Trust receives written notice from the undertaker. If by the expiry of the further 14 days the Trust has not intimated its approval or disapproval, the Trust will be deemed to have approved the plans as submitted.

**120.—**(1) Any activities to be carried out by virtue of paragraph 119 must, when commenced, be carried out—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 119;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the Trust;
- (c) in such manner as to cause as little damage as is possible to the Trust’s property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe access to Trust property.

(2) If any damage to Trust property or any such interference or obstruction is caused by the carrying out of, or in consequence of the entry on to Trust property, the undertaker must,

notwithstanding any such approval, make good such damage and must pay to the Trust all reasonable expenses to which the Trust may be put by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the Trust or its servants, contractors or agents; or
- (b) any liability on the Trust with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**121.** The undertaker must—

- (a) at all times afford reasonable facilities to the Trust for access to inspect the activities of the undertaker on Trust property; and
- (b) supply the Trust with all such information as the Trust may reasonably require with regard to activities of the undertaker on Trust property.

**122.**—(1) Subject to sub-paragraph (2) the undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any Trust property, unless preventing such access is with the consent of the Trust or is in the case of an emergency.

(2) Sub-paragraph (1) does not apply to the Quarry Bridge 2 works while they are under construction, save that access to any Trust property must not be prevented in the case of an emergency.

**123.**—(1) Subject to sub-paragraph (2) where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Trust to Trust property, it must give the Trust 56 days' written notice of that requirement.

(2) Sub-paragraph (1) does not apply in the case of an emergency.

**124.** Where under this Part of this Schedule the Trust is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed but may be subject to reasonable conditions.

**125.** The undertaker must repay to the Trust all costs, charges and expenses which it may reasonably incur or which it may sustain—

- (a) in the examination of plans under this Part of this Schedule;
- (b) in respect of the approval of plans submitted by the undertaker and the supervision by the Trust of the carrying out or construction of any activities or the Quarry Bridge 2 works and otherwise in connection with the implementation of the provisions of this Part of this Schedule; and
- (c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting and watching the activities of the undertaker on Trust property.

### **Expert determination**

**126.**—(1) Article 56 (arbitration) applies to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

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(3) All parties involved in settling any difference must use all reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert’s appointment;
- (b) permit a party to comment on the submissions made by the other party within 14 days of receipt of the submission;
- (c) issue a decision within 28 days of receipt of the submissions under sub-paragraph (5)(a); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 56 (arbitration).

SCHEDULE 17

Article 55

Documents to be Certified

Documents for certification that they are true copies of the documents referred to in this Order—

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Document</i>	<i>Drawing Number</i>	<i>Revision</i>
Ashton Vale Road and Winterstoke Road Highway Works Plan	674946.BD.29.01-SK31 Rev L	2
The Avon Gorge Vegetation Management Plan		2
The book of reference		5
Bridleway Extension under Elevated M5 plan	467470.BQ.04.20.520 Rev H	4

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(1)	(2)	(3)
<i>Document</i>	<i>Drawing Number</i>	<i>Revision</i>
Cattle Creep Proposed General Arrangement drawing	W1097B-ARP-DRG-ECV-300003 and W1097B-ARP-DRG-ECV-300004	1
The Code of Construction Practice		2
The compounds, haul roads and access to works plan	674946.BQ.42.01-380 to 674946.BQ.42.01-403 Rev H	5
The crossings to be extinguished plans	674946.BQ.42.01-410 to 674946.BQ.42.01-426 Rev G	3
CTMP - Construction Traffic Management Plan		1
The design drawings	See requirement 4	See requirement 4
Earthworks	W1097B-ARP-DRG-EGE 300001 Rev A02 to W1097B-ARP-DRG-EGE-300008 Rev A02	1
The environmental master plan	674946-001-024-A ES-C	3
The environmental statement  (including the Addendums to the Environmental Statement)		
General arrangement plans	674946.BQ.42.01-570 to 674946.BQ.42.01-593 Rev K	5
Habitat impacted by construction works within the Avon Gorge Woodlands SAC plan	674946-004-004-A Rev ES A	1
The hedgerow location plan	674946.BQ.42.01-600 A	1
The important hedgerow plan	674946-006-020-A	2
The land plan		4
The Master CEMP		3
The permanent and temporary stopping up and diversion plan	674946.BQ.42.01-480 to 674946.BQ.42.01-481  674946.BQ.42.01-484 to  674946.BQ.42.01-486  674946.BQ.42.01-496	2
The permanent traffic regulation order plans	467470.BQ.04.20-160 Rev H	2

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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Document</i>	<i>Drawing Number</i>	<i>Revision</i>
	467470.BQ.04.20-215 Rev F	
	467470.BQ.04.20-225 Rev D	
	467470.BQ.04.20.601 Rev O	
Portbury Hundred location of additional tree planting plans	467470.BQ.04.20-610 to 467470.BQ.04.20-613	1
Railway landscape plans (disused line)	674946.BJ.35.01-01 to 674946.BJ.35.01-08 Rev I	3
Section drawings (Longitudinal Profile of Railway Alignment and Cross Section Plans)	W1097B-ARP-DRG-ETR-001301 to W1097B-ARP-DRG-ETR-01309	2
	467470.BQ.04.20-104 Rev B	3
	467470.BQ.04.20-219 Rev B	
	467470.BQ.04.20-292 Rev B	
	467470.BQ.04.20-410 Rev B	
	467470.BQ.04.20-531 Rev B	
	467470.BQ.04.20-630 Rev B	
	467470.BQ.04.20-SK300-SK304 Rev K	
	674946.BD.29.01-SK33 Rev A	
The works plans	674946.BQ.42.01-300 to 674946.BQ.42.01-324 Rev Q	7
The National Cycle Network (NCN) temporary and permanent work plans	467470.BQ.04.20-530 Rev H 467470.BQ.04.20-540 Rev I 467470.BQ.04.20-550 Rev E 467470.BQ.04.20-551 Rev E 467470.BQ.04.20-552 Rev F 467470.BQ.04.20-553 Rev E 467470.BQ.04.20-554 Rev B	2



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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Document</i>	<i>Drawing Number</i>	<i>Revision</i>
The new highways plans	674946.BQ.42.01-510 to 674946.BQ.42.01-511 Rev H  674946.BQ.42.01-515 Rev H  674946.BQ.42.01-525 to 674946.BQ.42.01-526 Rev H	3

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#### **EXPLANATORY NOTE**

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

This Order authorises North Somerset District Council to construct a new railway on the formation of the disused Portishead Branch Line railway and to carry out works to upgrade the existing freight only Parson Street to Royal Portbury Dock railway to allow it to be used for passenger railway services.

The purpose of this Order is to allow passenger services to run between Portishead and Bristol and to connect into the wider national railway network. The railway will, once open to passenger services, be owned and maintained by Network Rail Infrastructure Limited.

The works also necessitate the diversion of an existing public footpath that crosses the railway at Barons Close, Ashton, Bristol.

The Order permits North Somerset District Council to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also makes provision in connection with the maintenance of the new section of railway.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 55 (documents to be certified) of this Order may be inspected free of charge during working hours at the offices of North Somerset District Council at Town Hall, Walliscote Grove Road, Weston-super-Mare BS23 1UJ.