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STATUTORY INSTRUMENTS

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**2013 No. 2808**

**INFRASTRUCTURE PLANNING**

**The M1 Junction 10a (Grade Separation) Order 2013**

*Made* - - - - - *30th October 2013*

*Coming into force* - - - - - *20th November 2013*

An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(1), for an order under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008(2) (“the 2008 Act”).

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

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application with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

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

**PART 1**

**PRELIMINARY**

**Citation and commencement**

**1.** This Order may be cited as the M1 Junction 10a (Grade Separation) Order 2013 and comes into force on 20th November 2013.

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(1) S.I. 2009/2264.  
(2) 2008 c. 29.  
(3) S.I. 2010/103.

## Interpretation

### 2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961(4);
- “the 1965 Act” means the Compulsory Purchase Act 1965(5);
- “the 1980 Act” means the Highways Act 1980(6);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(7);
- “the 1990 Act” means the Town and Country Planning Act 1990(8);
- “the 1991 Act” means the New Roads and Street Works Act 1991(9);
- “the 2008 Act” means the Planning Act 2008;
- “address” includes any number or address used for the purposes of electronic transmission;
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- “the authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;
- “the 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;
- “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;
- “compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

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- (4) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.
  - (5) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
  - (6) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
  - (7) 1984 c. 27.
  - (8) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
  - (9) 1991. c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

“demolition” means destruction and removal of existing infrastructure, buildings and the like required to facilitate, or which are incidental to, construction of the Works described in Schedule 1 (the authorised development); and such demolition may occur on one occasion or over any period of time.

“electronic transmission” means a communication transmitted—

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

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

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

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

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

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

“the limits of deviation” means the limits of deviation referred to in article 5 (limits of deviation);

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

“Order land” means the land shown on the land plans as within the limits of land to be acquired or used permanently and temporarily, and described in the book of reference;

“the Order limits” means the limits of deviation shown on the works plans, within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(10);

“the relevant planning authority” means Luton Borough Council in relation to land in its area and Central Bedfordshire Council in relation to land in its area, and “the relevant planning authorities” means both of them;

“the sections” means the sections and other plans certified as the sections by the Secretary of State for the purposes of this Order;

“special road” means a highway which is a special road in accordance with section 16 of the 1980 Act or by virtue of an order granting development consent;

“statutory undertaker” means a statutory undertaker for the purposes of section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 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;

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

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

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

“trunk road” means a highway which is a trunk road by virtue of—

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(10) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34).

- (a) section 10 or 19(1) of the 1980 Act;
- (b) an order or direction under section 10 of that Act;
- (c) an order granting development consent; or
- (d) any other enactment;

“undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and article 6 (benefit of Order);

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

“the works plans” means the plans certified as the works plans by the Secretary of State 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 and 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 is otherwise comprised in the Order land.

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

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

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the street plans.

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

## PART 2

### PRINCIPAL POWERS

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

3. 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.

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

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

#### **Limits of deviation**

5. In carrying out the authorised development the undertaker may—
- (a) deviate laterally from the lines and situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
  - (b) deviate vertically from the levels of the authorised development shown on the sections—
    - (i) to any extent not exceeding 1.5 metres upwards; and

(ii) to any extent downwards as may be found to be necessary or convenient.

### **Benefit of Order**

6.—(1) Subject to article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of Luton Borough Council.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

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

7.—(1) Subject to section 144 of the 2008 Act, the undertaker may, with the consent of the Secretary of State—

- (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) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

## **PART 3 STREETS**

### **Application of the 1991 Act**

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

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

(2) In Part 3 of the 1991 Act references, in relation to major highway works, 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 carried out under the powers of this Order—

- section 56 (directions as to timing);

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

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 14 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—  
 section 54 (advance notice of certain works), subject to paragraph (6);  
 section 55 (notice of starting date of works), subject to paragraph (6);  
 section 57 (notice of emergency works);  
 section 59 (general duty of street authority to co-ordinate works);  
 section 60 (general duty of undertakers to co-operate);  
 section 68 (facilities to be afforded to street authority);  
 section 69 (works likely to affect other apparatus in the street);  
 section 75 (inspection fees);  
 section 76 (liability for cost of temporary traffic regulation); and  
 section 77 (liability for cost of use of alternative route),

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

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

(7) Nothing in article 9 (construction and maintenance of new, altered or diverted streets) is to—  
 (a) affect the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the undertaker is not by reason of any duty under that article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or  
 (b) have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

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

**9.—**(1) Subject to paragraph (2), the streets authorised to be constructed, altered or diverted under this Order are to be highways maintainable at the public expense, and unless otherwise agreed with the highway authority in whose area those streets lie are to be—

(a) maintained by and at the expense of the undertaker for a period of 12 months from their completion; and

- (b) at the expiry of that period, by and at the expense of the highway authority, provided that the works concerned have been completed to the reasonable satisfaction of the highway authority, and in the case of Work No. 1, article 10(1) has taken effect.
- (2) Where a street which is not and is not intended to be a highway maintainable at the public expense is constructed, altered or diverted under this Order, the street (or part of the street as the case may be), unless otherwise agreed with the street authority, is to be —
  - (a) maintained by and at the expense of the undertaker for a period of 12 months from its completion; and
  - (b) at the expiry of that period by and at the expense of the street authority provided that the street has been completed to the reasonable satisfaction of the street authority.
- (3) In any action against the undertaker in respect of damage resulting from its failure to maintain a street to which paragraph (2) applies, section 58 of the 1980 Act applies as if that street were a highway maintainable at the public expense.

### **Classification of roads**

**10.**—(1) On a date to be determined by the undertaker, and subject to the procedures in paragraph (2) being satisfied—

- (a) the Watford and South of St Albans—Redbourn—Kidney Wood, Luton, Special Roads Scheme 1957 is varied as follows—
  - (i) for Article 1A substitute—

“The centre line of the special road is indicated in blue on the plan numbered F/D121475/IPC/SR1/001 and marked M1 Junction 10A Grade Separation Variation of Special Road Status, signed by authority of the Secretary of State for Transport and deposited at Deposited Documents Service, Department for Transport, Room F13, Ashdown House, Sedlescombe Road North, St. Leonards-on-Sea, East Sussex, TN37 7GA”; and
  - (ii) for the Schedule to that Scheme, after the “The Route of the Special Road”, substitute—

“From a point on the former London-Aylesbury-Warwick-Birmingham Trunk road (A.41) near Watford in the County of Hertfordshire approximately 350 yards south-east of the centre point of the bridge carrying the said trunk road over the River Colne in a general north-westerly direction to Junction 10 of the M1 Motorway at Slip End, Luton.”;
- (b) subject to sub-paragraph (c), the highways in respect of which special road status has been removed by virtue of sub-paragraph (a) are to be trunk roads for which the Secretary of State is the highway authority and are to be classified as the A1081 trunk road; and
- (c) the section of highway between points A and B on sheet 2 of the street plans, being from the point where the existing M1 Spur road meets London Road at Kidney Wood Roundabout for a distance of approximately 195 metres in a westerly direction, is to cease to be trunk road, is to be classified as the A1081, and is to become—
  - (i) a principal road for the purpose of any enactment or instrument which refers to highways classified as principal roads; and
  - (ii) a classified road for the purpose of any enactment or instrument which refers to highways classified as classified roads,

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

- (2) Prior to the date on which paragraph (1) is to take effect, the undertaker is to—

- (a) notify the Secretary of State in writing of the date on which paragraph (1) is to take effect; and
- (b) publish in The London Gazette, and in one or more newspapers circulating in the vicinity of the authorised development, notification of the date on which paragraph (1) takes effect, and the general effect of that paragraph.

(3) Upon completion of the authorised development, the following sections of highway are to be classified as the A1081, and are to be principal roads and classified roads for the purpose of any enactment or instrument which refers to highways classified as principal roads and classified roads, as if such classification had been made under section 12(3) of the 1980 Act—

- (a) Kidney Wood Eastbound Diverge Slip Road, from the end of the nosing of its taper from A1081 Airport Way (previously M1 Spur) to its junction with the give way line of Kidney Wood Northern Roundabout, a distance of approximately 241 metres;
- (b) Kidney Wood Eastbound Merge Slip Road, from its junction with Kidney Wood Northern Roundabout to the start of the nosing of its taper onto A1081 Airport Way, a distance of approximately 187 metres;
- (c) Kidney Wood Westbound Diverge Slip Road, from the end of its taper from A1081 Airport Way to its junction with the give way line of Kidney Wood Southern Roundabout, a distance of approximately 331 metres;
- (d) Kidney Wood Westbound Merge Slip Road, from its junction with Kidney Wood Southern Roundabout to the start of the nosing of its taper onto A1081 Airport Way (previously M1 Spur), a distance of approximately 310 metres;
- (e) Kidney Wood Northern Roundabout, for the extent of its circulatory carriageway;
- (f) the A1081 London Road Link, from its junction with Kidney Wood Southern Roundabout to its junction with Kidney Wood Northern Roundabout, a distance of approximately 502 metres;
- (g) Kidney Wood Southern Roundabout, for the extent of its circulatory carriageway; and
- (h) the A1081 London Road (South), from its junction with the give way line of Kidney Wood Southern Roundabout to the centreline of its junction with Newlands Road, a distance of approximately 300 metres.

### Clearways

**11.**—(1) This article has effect upon completion of the authorised development.

(2) For paragraph 70 of Schedule 1 to the Various Trunk Roads (Prohibition of Waiting) (Clearways) Order 1963(**11**), substitute—

“Between a point 150 yards north of its junction with West Hyde Road, Kinsbourne Green and a point 181 yards south of the centre of its junction with Newlands Road, a distance of approximately 1.39 miles.”.

(3) Subject to paragraph (4), no person is to cause or permit any vehicle to wait on any part of a road specified in Schedule 3 (clearways), other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(4) Nothing in paragraph (3) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
  - (i) the removal of any obstruction to traffic;



- (ii) the maintenance, improvement, reconstruction or operation of the road;
  - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 to the Telecommunications Act 1984<sup>(12)</sup>; or
  - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
- (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
  - (ii) in the service of a local authority, a safety camera partnership or the Vehicle and Operator Services Agency in pursuance of statutory powers or duties;
  - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991<sup>(13)</sup>; or
  - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000<sup>(14)</sup>; and
- (c) in relation to a vehicle waiting when the person in control of it is—
- (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or
  - (iii) prevented from proceeding by circumstances outside the person’s control; or
- (d) to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispersed.

(5) Paragraphs (2) to (4) have effect as if made by traffic regulation order under the 1984 Act, and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

(6) In this article, “traffic officer” means an individual designated under Section 2 (designation of traffic officers) of the Traffic Management Act 2004<sup>(15)</sup>.

### **Speed limits**

**12.**—(1) From the date determined in accordance with article 10(1) and (2), the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011<sup>(16)</sup> is amended in accordance with Part 1 of Schedule 4 (speed limits).

- (2) Upon completion of the authorised development—
- (a) paragraph 41 of the Schedule to the County of Bedfordshire (Principal Roads) (Restriction) Order 1988 is revoked;
  - (b) the Borough of Luton (Speed Limits) Order 2011 is varied as follows—
    - (i) in Schedule 3, omit “London Road” from the “road” column, and from the corresponding entry in the “length subject to speed limit” column, omit “From a point 10 metres south-east of the southern boundary of No. 151 London Road to a point 8 metres north of the give-way line at Kidney Wood Roundabout”; and

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(12) 1984 c. 12.  
(13) 1991 c. 56.  
(14) 2000 c. 26.  
(15) 2004 c. 18.  
(16) S.I. 2011/1015.

(ii) in Schedule 4, replace “New Airport Way” with “A1081 Airport Way (previously described as New Airport Way)”, and replace the corresponding entry in the “length subject to speed limit” column with “The dual carriageway length from a point immediately below the centre of the Capability Green over-bridge to a point 150 metres south-west of the centre point on Park Street bridge together with the Capability Green eastbound merge slip road from the end of the merge nosing at its junction with the A1081 Airport Way, south-westwards for a distance of 90 metres and the Capability Green westbound diverge slip road from the start of the diverge nosing at its junction with the A1081 Airport Way to its junction with the Capability Green southern roundabout, a distance of 410 metres”;

(c) no person is to drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of roads identified in Part 2 of Schedule 4 to this Order; and

(d) no person is to drive a motor vehicle at a speed exceeding 50 miles per hour in the lengths of roads identified in Part 3 of Schedule 4 to this Order.

(3) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011<sup>(17)</sup> when used in accordance with regulation 3(5) of those regulations.

(4) The speed limits imposed by this article may be varied or revoked by any enactment which provides for the variation or revocation of such matters.

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

**13.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 5 (streets to be stopped up) to the extent specified and described in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 5 is 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 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 suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article is subject to article 28 (apparatus and rights of statutory undertakers in stopped up streets).

### **Temporary stopping up of streets**

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

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

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

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

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 6 (temporary stopping up of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) any other street, without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld,

except that this paragraph does not apply where the undertaker is the street authority.

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

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b), the street authority is deemed to have granted that consent.

### **Access to works**

**15.** 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 and of the nature specified in Schedule 7 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority (where the highway authority is not the undertaker), 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.

## **PART 4**

### **SUPPLEMENTAL POWERS**

#### **Discharge of water**

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

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

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

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

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

(5) The undertaker must not, in carrying out or maintaining works under the powers conferred by 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 2010<sup>(18)</sup>.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(19)</sup> have the same meaning as in that Act.

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

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

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land 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 entering the land produce written evidence of authority to do so; and

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<sup>(18)</sup> S.I. 2010/675

<sup>(19)</sup> 1991 c. 57

- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes are to be made under this article—
  - (a) on land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority,but such consent must not be unreasonably withheld.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

## PART 5

### POWERS OF ACQUISITION

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

**18.**—(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, or is required as replacement land.

(2) This article is subject to paragraph (3), paragraph (1) of article 19 (time limits for exercise of authority to acquire land compulsorily and to use land temporarily), paragraph (2) of article 20 (compulsory acquisition of rights etc.) and paragraph (9) of article 25 (temporary use of land for carrying out the authorised development).

(3) Paragraph (1) does not apply to the land numbered 2, 2A and 2G in the book of reference and on the land plans.

(4) In relation to Crown Land, the powers in paragraph (1) are limited to interests in that land which for the time being are held otherwise than by or on behalf of the Crown.

#### **Time limits for exercise of authority to acquire land compulsorily and to use land temporarily**

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(20)</sup> as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 25 (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 etc.**

**20.**—(1) Subject to paragraphs (2) and (5) the undertaker may acquire compulsorily such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any

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<sup>(20)</sup> 1981 c. 66.

purpose for which that land may be acquired under article 18 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, or the imposition of restrictive covenants affecting the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2) the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application 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.

(5) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of land numbered 3B and 3D in the book of reference and on the land plans.

### **Private rights over land**

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

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

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) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

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

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

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

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

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
    - (i) the completion of the acquisition of the land or the acquisition of rights 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.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**22.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and

(b) subsection (2) is omitted.

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil or air-space only**

**23.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the air-space over the land referred to in article 18 (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 air-space over land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

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

**24.**—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker 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, 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 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**

**25.**—(1) The undertaker may, in connection with the carrying out of the authorised development but subject to article 19(1)(time limits for exercise of authority to acquire land compulsorily and to use land temporarily)—

(a) enter on and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
- (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights



only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;

- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 10, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

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

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

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

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d); or
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction 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 under Part 1 of the 1961 Act.

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

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

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from acquiring new rights or imposing restrictive covenants over any part of the land specified in Schedule 8.

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

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

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

26.—(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 of the 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 that land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

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

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

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

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

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

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

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

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

### **Statutory undertakers**

27.—(1) Subject to paragraph (2), the undertaker may extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

(2) Paragraph (1) does not have 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;
- (b) article 28 (apparatus and rights of statutory undertakers in stopped up streets); or
- (c) Parts 2 and 3 of Schedule 12 (protective provisions).

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

**28.**—(1) Where a street is stopped up under article 13 (permanent stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

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

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined to be necessary by arbitration in accordance with article 37 (arbitration), 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 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
  - (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.
- (8) In this article—
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
  - “relocation works” means work carried out, or apparatus provided, under paragraph (2); and
  - “statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(21).

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

**29.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 27 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 27, any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 28 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

- “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and
- “public utility undertaker” has the same meaning as in the 1980 Act.

## **PART 6**

### **OPERATIONS**

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

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

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

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(21) 2003 c. 21.

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

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

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

### **Trees subject to tree preservation order**

**31.**—(1) The undertaker may fell or lop any tree described in Schedule 11 (trees subject to tree preservation orders) and identified on the environmental context plans, cut back its roots or undertake such other works described in column (3) of that Schedule if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

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

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty imposed by section 206(1) of the 1990 Act (replacement of trees) does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

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

## **PART 7**

### **MISCELLANEOUS AND GENERAL**

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

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

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

**33.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(22) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with

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(22) 1990 c. 43.

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) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(23)</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 reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protection of interests**

**34.** Schedule 12 (protective provisions) has effect.

### **Certification of plans etc.**

**35.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference;
- (b) the environmental statement;
- (c) the land plans;
- (d) the works plans;
- (e) the street plans;
- (f) the sections; and
- (g) the environmental context plans,

for certification that they are true copies of the documents referred to in this Order.

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

### **Service of notices**

**36.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

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(23) 1974 c.40.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978<sup>(24)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of 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 is taken to be fulfilled only where—

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

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

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

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date 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.

## **Arbitration**

**37.** Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, the parties must endeavour to resolve all matters in dispute as soon as practicable and in the event of their failing to resolve such matters 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

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(24) 1978 c. 30.

the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

### **Traffic regulation**

**38.**—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

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

(2) The power conferred by paragraph (1) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (6) any prohibition, restriction or other provision made under paragraph (1) may have effect both before and after the expiry of that period.

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

(4) The undertaker must not exercise the powers conferred by paragraph (1) unless it has—

- (a) given not less than—
  - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
  - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a) (i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

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

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

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and



(b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(25) (road traffic contraventions subject to civil enforcement).

(6) 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 of paragraph (1) within a period of 24 months from the opening of the authorised development.

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

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

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

### **Procedure in relation to approvals etc. under Schedule 2**

**39.**—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a requirement under Schedule 2 (requirements), the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions); and
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Signed by authority of the Secretary of State for Transport

*Martin Woods*  
Head of the Transport and Works Act Orders  
Unit  
Department for Transport

30th October 2013

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## SCHEDULES

### SCHEDULE 1

Articles 2 and 3

#### THE AUTHORISED DEVELOPMENT

##### **In the administrative areas of Luton Borough Council and Central Bedfordshire Council—**

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development within the meaning of section 115(2) of the 2008 Act, comprising:

**Work No.1** — Construction of permanent highway (centred on grid reference TL 09169 18987) (1,332 metres in length) commencing at the M1 Junction 10 Roundabout, running in a north-easterly direction and terminating on the A1081 Airport Way at the Capability Green Overbridge, including—

- (a) widening the existing carriageway on the M1 Spur and A1081 Airport Way to a three lane dual carriageway including maintenance lay bys;
- (b) construction of new dual carriageway to provide a continuous link and remove the existing M1 Junction 10a at-grade roundabout (known as Kidney Wood Roundabout);
- (c) construction of an un-segregated footway and cycleway between the proposed Kidney Wood Northern Roundabout and the Capability Green Junction, located in the eastbound verge;
- (d) alterations to the infiltration pond to the west of the M1 Spur and north-east of Newlands Road, including the construction of a new private vehicular access from a point on the north-eastern highway boundary of Newlands Road approximately 435 metres to the north-west of its junction with A1081 London Road (south);
- (e) provision of private pedestrian access to maintain highways equipment at:
  - (i) a point on the south-western highway boundary of Newlands Road approximately 30 metres to the north-west of the underbridge crossing of the M1 Spur;
  - (ii) a point on the south-western highway boundary of Newlands Road approximately 25 metres to the south-east of the underbridge crossing of the M1 Spur;
  - (iii) a point on the north-eastern highway boundary of Newlands Road approximately 20 metres to the north-west of the underbridge crossing of the M1 Spur; and
  - (iv) a point on the north-eastern highway boundary of Newlands Road approximately 30 metres to the south-east of the underbridge crossing of the M1 Spur;
- (f) provision of average speed cameras;
- (g) erection of overhead gantry signs;
- (h) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (i) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

**Work No.2** — Construction of permanent highway (1,115 metres in length) commencing at Newlands Roads junction with the A1081 London Road, running in a north-westerly direction to the proposed Kidney Wood Southern Roundabout, then running in a north-north-westerly direction through a proposed underbridge under the M1 Spur (85 metres in length), then proceeding in a north-westerly direction prior to going through a right hand curve to the proposed Kidney Wood Northern Roundabout, then proceeding in a northerly direction terminating on London Road approximately 113 metres south of the centre of Ludlow Avenue’s junction with London Road, including—

- (a) construction of new single carriageway highway;
- (b) improvements to the existing highways;
- (c) construction of two new roundabout junctions;
- (d) construction of footways and cycleways;
- (e) construction of an underbridge and associated wing walls and retaining walls;
- (f) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (g) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

**Work No.3A** — Construction of permanent highway (349 metres in length) commencing at the proposed Kidney Wood Southern Roundabout on the A1081 London Road proceeding in a northerly direction, then through a left hand curve to connect with the M1 Spur’s westbound carriageway 455 metres north-east of M1 Junction 10 Roundabout, including—

- (a) construction of a new single lane connector road with a hardshoulder;
- (b) provision of average speed cameras; and
- (c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

**Work No.3B** — Construction of permanent highway (391 metres in length) commencing on the A1081 Airport Way westbound carriageway 480 metres south-west of the Capability Green Overbridge proceeding in a south-westerly direction, then going through a left hand curve followed by a right hand curve before terminating at the proposed Kidney Wood Southern Roundabout on A1081 London Road, including—

- (a) construction of new single lane connector road with a hardshoulder;
- (b) provision of average speed cameras; and
- (c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

**Work No.4A** — Construction of permanent highway (281 metres in length) commencing on the M1 Spur eastbound carriageway 544 metres north-east of the M1 Junction 10 Roundabout proceeding in a north-easterly direction then going through a left hand curve before terminating at the proposed Kidney Wood Northern Roundabout on London Road, including—

- (a) construction of new two lane connector road;
- (b) provision of average speed cameras; and

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- (c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway.

**Work No.4B** — Construction of permanent highway (225 metres in length) commencing at the proposed Kidney Wood Northern roundabout proceeding in a southerly direction then going through a left hand curve to connect with the A1081 Airport Way eastbound carriageway 448 metres south-west of the Capability Green Overbridge, including—

- (a) construction of new single lane connector road with hardshoulder;
- (b) construction of a combined un-segregated footway and cycleway;
- (c) provision of average speed cameras; and
- (d) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

**Work No. 5** — Reconfiguration of the existing A1081 London Road (409 metres in length) to provide an access to Bull Wood Cottages, Kidneywood House and Bull Wood to be referred to as Old London Road (South), commencing from the proposed A1081 London Road (South), 150 metres north of its junction with Newlands Road, proceeding in an easterly direction, then going through a left hand curve before continuing in a northerly direction, then terminating 81 metres south of the existing M1 Junction 10a roundabout, including—

- (a) construction of new single lane road and junction;
- (b) construction of a turning head;
- (c) construction works to narrow the existing carriageway to a single track road with passing places;
- (d) construction of two private vehicular access points from the west highway boundary of Old London Road (South) to an area of landscaping, at approximately 180 metres and 370 metres to the north of its junction with A1081 London Road (South);
- (e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (f) drainage works, earthworks, pavement works, kerbing and paved areas work, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction and modification of the permanent highway;

**Work No. 6** — Reconfiguration of the existing London Road (to be stopped up) and part of the adjoining agricultural field into amenity land, including—

- (a) construction of a new private vehicular and pedestrian access to Kidney Wood at a point on the eastern highway boundary of London Road approximately 13 metres to the north of its junction with Kidney Wood Northern Roundabout;
- (b) construction of a turning head;
- (c) construction of works to widen the existing London Road footway to form a public footpath;
- (d) landscaping works;
- (e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

- (f) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, works to control access and other works associated with the provision of the amenity land;

**Work No 7** — Diversion of public footpath, requiring creation of new path (373 metres in length) commencing 20 metres north-east of Newlands Road proceeding in a north-easterly direction and then in a northerly direction terminating at the proposed A1081 London Road Link, 147 metres south-west of the proposed Kidney Wood Northern Roundabout, including—

- (a) erection of footpath gates or stiles;
- (b) erection of signing; and
- (c) drainage works, earthworks, signing works, fencing works, and other works associated with the creation of the public footpath;

**Work No 8** — Construction of a drainage pipe between Kidney Wood Southern Roundabout and the proposed drainage ponds, including—

- (a) construction of piped drainage outfall; and
- (b) drainage works, earthworks, landscaping works and other works associated with the construction of a drainage pipe;

**Work No 9** — Works to excavate existing old tip area down to sound ground and fill back up to original ground level with engineering fill, including—

- (a) excavation to sound ground;
- (b) fill to original ground levels with engineering fill;
- (c) any earthworks strengthening measures as may be required; and
- (d) earthworks, drainage works, fencing works, landscaping works and other works associated with this work;

**Work No.10** — Construction of drainage ponds, including—

- (a) construction of attenuation pond;
- (b) construction of infiltration basin;
- (c) construction of private vehicular access from the north-eastern highway boundary of Newlands Road, from a point approximately 235 metres to the north-west of its junction with A1081 London Road (South), and construction of turning head and access tracks;
- (d) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (e) drainage works, earthworks, signing works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the drainage ponds;

**Work No 11** — Works to fill old borrow pit to original ground levels, including—

- (a) excavation to sound ground;
- (b) fill to original ground levels with engineering fill; and
- (c) earthworks, drainage works, landscaping works and other works associated with filling the old borrow pit;

**Work No 12** — Works to mitigate the impact of the proposed highway works on Kidney Wood, including—

- (a) trimming, pollarding and coppicing of trees;
- (b) clearance of vegetation, as required to construct the works;
- (c) planting of a new boundary hedge;

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- (d) erection of a new fence to protect the hedge; and
- (e) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Kidney Wood;

**Work No 13** — Works to mitigate the impact of the proposed highway works on Bull Wood, including—

- (a) trimming, pollarding and coppicing of trees;
- (b) clearance of vegetation, as required to construct the works;
- (c) erection of a new boundary fence; and
- (d) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Bull Wood; and

in connection with the construction of any of those works, further development within the Order limits consisting of—

- (i) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (ii) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (iii) ramps, means of access, footpaths, cycleways, embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, wing walls, highway lighting, fencing and culverts;
- (iv) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus in a street; works to alter the position of apparatus, including mains, sewers, drains and cables;
- (v) works to alter the course of, or otherwise interfere with a watercourse other than a navigable watercourse;
- (vi) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (vii) works for the benefit or protection of land affected by the authorised development; and
- (viii) such other works, including contractors' compounds, working sites, storage areas, temporary fencing and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

For the avoidance of doubt, any demolition preceding the Works is to be regarded as an integral part of the authorised development.

## SCHEDULE 2

Article 3

### REQUIREMENTS

#### Interpretation

1.—(1) In this Schedule—

“contaminated land plan” means a written scheme for the treatment of contaminated land during construction;

“dust management plan” means a written scheme for the attenuation of dust during construction;

“relevant highway authority” means the highway authority responsible for the highway in question; and

“stage” means a defined section (if any) of the authorised development, the extent of which has been submitted to and approved in writing by the relevant planning authority under requirement 3.

(2) References in this Schedule to numbered requirements are references to the corresponding numbered paragraph of this Schedule.

### **Time limits**

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

### **Stages of authorised development**

3. Where the authorised development is to be implemented in stages, none of the authorised development is to commence until a written scheme setting out all the stages of the authorised development has been submitted to and approved in writing by the relevant planning authority. The authorised development must be carried out in accordance with the approved scheme.

### **Scheme design changes and staging**

4.—(1) The authorised development must be carried out in accordance with the scheme design shown on the works plans and the sections.

(2) No stage of the authorised development is to commence until written details of the layout, scale and external appearance of any proposed gantries relating to that stage have been submitted to and approved in writing by the relevant planning authority. The proposed gantries must be constructed in accordance with the approved details.

### **Ecology**

5.—(1) None of the authorised development, including any site clearance works, is to commence until an ecological strategy relating to the Order land containing details of how the authorised development will affect areas of nature conservation interest and what mitigation, compensatory and enhancement measures, reflecting the environmental statement, need to be incorporated into the authorised development in order to protect and enhance those areas, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved ecological strategy.

### **Protection of retained trees and shrubs during construction**

6.—(1) No stage of the authorised development is to commence until for that stage written details, reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority for the safeguarding of trees, shrubs and hedgerows to be retained.

(2) The approved safeguarding measures must be implemented prior to the commencement of any demolition works, removal of topsoil or commencement of building operations and retained in position until the development is completed.

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(3) The safeguarded areas must be kept clear of plant, building materials, machinery and other objects and the existing soil levels not altered.

### **Landscaping scheme**

7.—(1) The authorised development must be landscaped in accordance with a written landscaping scheme, reflecting the environmental statement and incorporating ecological enhancement, mitigation and compensatory measures, that has been submitted to and approved in writing by the relevant planning authority. The landscaping scheme must be approved before the authorised development commences.

(2) The landscaping scheme must be in accordance with the ecological strategy approved under requirement 5, and must include details of all proposed hard and soft landscaping works for all land subject to development within the Order limits, including precise details and, where appropriate, samples relating to the following—

- (a) for hard landscaping areas—
  - (i) proposed finished levels;
  - (ii) hard surfacing materials;
  - (iii) minor structures (e.g. street furniture, signs and lighting, to include the colouring of lighting columns);
  - (iv) retained historic landscape features and proposals for restoration, where relevant; and
  - (v) boundary treatments and all means of enclosure; and
- (b) for soft landscaping areas—
  - (i) schedules and plans showing the location of proposed planting, noting species consistent with the ecological strategy, use of any species of local provenance, planting, size and proposed numbers and densities;
  - (ii) written specifications, schedules, and plans showing the proposed treatment and management of retained trees, shrubs and hedgerows;
  - (iii) services below ground, including drainage, pipelines, power and communication cables; and
  - (iv) written specifications associated with plant and grass establishment, including cultivation and other operations.

(3) An implementation timetable must be provided as part of the scheme that is consistent with the provisions set out in the approved ecological strategy.

### **Implementation and maintenance of landscaping**

8.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice, including the Manual Of Contract Documents For Highway Works: Volume 1 Specification For Highway Works Series 3000 (05/01): Landscape And Ecology.

(2) Any tree, shrub or hedgerow planted as part of the approved landscaping that, within the period of three 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 its written consent to any variation.



(3) If it becomes obvious that the original species and type were unsuitable for whatever reason, an appropriate alternative species may be specified, subject to the written consent of the relevant planning authority.

(4) Any tree, shrub or hedgerow which is retained and safeguarded during construction in accordance with requirement 6 must thereafter be maintained, and if necessary replaced, in accordance with this requirement, unless otherwise agreed in writing by the relevant planning authority.

### **Drainage**

9.—(1) No stage of the authorised development is to be commenced until for that stage written details of the surface and foul water drainage system reflecting the mitigation measures included in the environmental statement, including where appropriate sustainable urban drainage solutions, have been submitted to and approved in writing by the relevant planning authority.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details.

### **Measures to protect the water environment**

10.—(1) None of the authorised development is to commence until—

- (a) a detailed site investigation has been carried out with respect to land within the Order limits to establish if contamination is present and to assess the degree and nature of contamination present and the action proposed to be taken to deal with any contamination that is identified;
- (b) a risk assessment has been carried out to consider the potential for pollution of the water environment; and
- (c) a water pollution prevention plan, reflecting the mitigation measures included in the environmental statement, has been submitted to and approved in writing by the relevant planning authority.

(2) The method and extent of the investigation and any measures or treatment to deal with contamination that is identified as a result must reflect the mitigation measures included in the environmental statement and be approved in writing by the relevant planning authority, following consultation with the Environment Agency and Thames Water Utilities Limited.

(3) The authorised development must be carried out—

- (a) in accordance with the approved water pollution prevention plan referred to in sub-paragraph (1)(c); and
- (b) incorporating any such measures or treatments as are approved under sub-paragraph (2)..

### **Flood risk assessment**

11.—(1) None of the authorised development is to commence until a flood risk assessment reflecting the mitigation measures included in the environmental statement has been submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

(2) The authorised development must be carried out in accordance with any recommendations made in the flood risk assessment.

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## **Archaeology**

**12.**—(1) No stage of the authorised development is to commence until for that stage a written scheme for the archaeological investigation of land within the Order limits has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must identify areas where field work and/or a watching brief are required, and the appropriate measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works and/or watching brief carried out on site under the scheme must be by a suitably qualified person or body approved by the relevant planning authority.

(4) Any archaeological works and/or watching brief must be carried out in accordance with the approved scheme.

## **Construction traffic and access strategy**

**13.**—(1) No stage of the authorised development is to commence until for that stage written details of construction traffic management measures and a travel plan for the contractor’s workforce reflecting the mitigation measures included in the environment statement and including means of travel to construction sites and any parking to be provided, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved traffic management measures and travel plan.

## **Construction work and construction compounds**

**14.**—(1) No stage of the authorised development is to commence until for that stage—

- (a) written details of the type and location of screen fencing for the proposed construction compounds;
- (b) written details of the type, specification and location of lighting around the compound areas and along the route during the construction phase of the authorised development;
- (c) a scheme for the attenuation of noise and vibration during construction;
- (d) a dust management plan; and
- (e) a contaminated land plan,

in each case reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved details and plans mentioned in sub-paragraph (1).

## **Site waste management plan**

**15.**—(1) No stage of the authorised development is to commence until a site waste management plan for that stage, reflecting the mitigation measures included in the environmental statement, has been submitted to and approved in writing by the relevant planning authority.

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

## **Code of construction practice**

**16.**—(1) No authorised development is to commence until a code of construction practice has been submitted to and approved in writing by the relevant planning authority.

(2) The code of construction practice must reflect the mitigation measures included in the environmental statement and the requirements relating to construction of the authorised development set out in this Schedule.

(3) The code of construction practice may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the code of construction practice..

### **Construction environmental management plan**

17.—(1) No authorised development is to commence until a construction environmental management plan has been submitted to and approved in writing by the relevant planning authority.

(2) The construction environmental management plan must be prepared in accordance with the provisions of the approved code of construction practice, and must reflect the mitigation measures included in the environmental statement.

(3) The construction environmental management plan may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the construction environmental management plan.

### **Approved details**

18. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details must reflect the mitigation measures included in the environmental statement.

### **Traffic management during construction**

19.—(1) The authorised development must be implemented in accordance with a traffic management plan submitted to and approved in writing by each relevant highway authority, after consultation with the police, other emergency services and any other parties considered to be relevant stakeholders by the undertaker.

(2) The traffic management plan must be designed in accordance with relevant legislation, guidance and best practice, balancing the need to minimise disruption to the travelling public, protect the public and the workforce from hazards, and facilitate the economical construction of the authorised development.

(3) The plan must be approved before the authorised development commences.

## SCHEDULE 3

Article 11

### CLEARWAYS

The roads specified for the purposes of article 11(3) (clearways) are—

- (a) M1 Spur/A1081 Airport Way dual carriageway (part of which was previously the M1 Spur) from its junction with the roundabout of Junction 10 of the M1 Motorway to Capability Green Overbridge, a distance of 1,338 metres;
- (b) A1081 London Road from a point 165 metres south of the centre of Newlands Road at its junction with the A1081 London Road to Kidney Wood Northern Roundabout, including

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- Kidney Wood Southern Roundabout and Kidney Wood Northern Roundabout, a distance of 1,130 metres;
- (c) Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way (previously the M1 Spur) to the give way line of Kidney Wood Northern Roundabout, a distance of 286 metres;
  - (d) Kidney Wood Eastbound Merge Slip Road from its junction with Kidney Wood Northern Roundabout to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 224 metres;
  - (e) Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to the give way line of the Kidney Wood Southern Roundabout, a distance of 395 metres;
  - (f) Kidney Wood Westbound Merge Slip Road from its junction with Kidney Wood Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way (previously the M1 spur), a distance of 350 metres;
  - (g) Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way to its junction with Capability Green Link Road, a distance of 169 metres;
  - (h) Capability Green Westbound Merge Slip Road from its junction with the Capability Green Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way, a distance of 153 metres;
  - (i) Capability Green Link Road from its junction with the Capability Green Northern Roundabout to its junction with the Capability Green Southern Roundabout, a distance of 191 metres; and
  - (j) Capability Green Southern Roundabout, for the extent of the circulatory carriageway.

#### SCHEDULE 4

Article 12

#### SPEED LIMITS

### PART 1

#### M1 MOTORWAY

For the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011(26) substitute—

#### *“SPECIFIED ROADS*

1. The specified roads are the—
  - (a) northbound carriageway of the M1 from marker post 33/4 to marker post 50/0;
  - (b) carriageways of the northbound slip roads;
  - (c) southbound carriageway of the M1 from marker post 50/0 to marker post 33/3; and
  - (d) carriageways of the southbound slip roads.
2. Any reference in this Schedule to—

- (a) the letter “M” followed by a number is a reference to the motorway known by that name;
  - (b) the letter “A” followed by a number is a reference to the road known by that name; and
  - (c) a junction followed by a number is (unless the context otherwise requires) a reference to the junction of the M1 of that number.
3. In this Schedule—
- “northbound slip roads” is a reference to the lengths of carriageway specified in paragraph 4;
- “off-slip road” means a slip road intended for the use of traffic leaving the M1;
- “on-slip road” means a slip-road intended for the use of traffic entering the M1;
- “southbound slip roads” is a reference to the lengths of carriageway specified in paragraph 5; and
- “zone sign” means a sign authorised by the Secretary of State under section 64 of the Road Traffic Regulation Act 1984(27) for the purpose of indicating that vehicles are entering, have entered or are leaving a specified road.
4. The northbound slip roads are as follows—
- (a) the linking carriageways which connect the M25 at junction 21A with the M1 at junction 6A; these commence at the exits from the clockwise and anti-clockwise carriageways of the M25 and end at the junction with the northbound carriageway of the M1;
  - (b) the off-slip road which connects the northbound carriageway of the M1 with the westbound carriageway of the A414 at junction 7;
  - (c) the on-slip roads which connect the westbound and eastbound carriageways of the A414 at junction 8 with the northbound carriageway of the M1;
  - (d) the off-slip road which connects the northbound carriageway of the M1 with the A5 at junction 9;
  - (e) the on-slip road which connects the A5 at junction 9 with the northbound carriageway of the M1;
  - (f) the off-slip road which connects to the junction 10 roundabout; this commences at the junction of the off-slip road with the northbound carriageway of the M1 and ends at the entry to the Junction 10 roundabout; and
  - (g) the on-slip road leading to the northbound carriageway of the M1; this commences at the exit from the Junction 10 roundabout and ends at the junction of the on-slip road with the northbound carriageway of the M1.
5. The southbound slip roads are as follows—
- (a) the off-slip road which connects (both directly and via the junction 10 roundabout) the southbound carriageway of the M1 with the eastbound carriageway of the Luton spur road; this commences at the junction of the off-slip road with the southbound carriageway of the M1 and ends at a point 45 metres to the north-west of the entry to the Junction 10 roundabout and at an equivalent point on the direct link;
  - (b) the on-slip road leading to the southbound carriageway of the M1 from the westbound carriageway of the Luton spur road (both directly and via the junction 10 roundabout); this commences at a point 100 metres to the south of the exit from the

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(27) 1984 c. 27.

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- Junction 10 roundabout and at an equivalent point on the direct link and ends at the junction of the on-slip road with the southbound carriageway of the M1;
- (c) the off-slip road which connects the southbound carriageway of the M1 with the A5 at junction 9;
  - (d) the on-slip road which connects the A5 at junction 9 with the southbound carriageway of the M1;
  - (e) the off-slip road which connects the southbound carriageway of the M1 with the westbound and eastbound carriageways of the A414 at junction 8;
  - (f) the on-slip road which connects the eastbound carriageway of the A414 at junction 7 with the southbound carriageway of the M1; and
  - (g) the linking carriageway which connects the M1 at junction 6A with the M25 at junction 21A; this commences at the exit from the southbound carriageway of the M1 and ends at the junctions with the clockwise and anti-clockwise carriageways of the M25.”.

## PART 2

### ROADS SUBJECT TO 40 MPH SPEED LIMIT

<i>(1)</i> <i>Number</i>	<i>(2)</i> <i>Description</i>
1	A1081 London Road — the single carriageway road from 165 metres south of the centre of its junction with Newlands Road to its junction with the Kidney Wood Southern Roundabout, a distance of 466 metres.
2	Newlands Road — the single carriageway road from its junction with the A1081 London Road to a point 10 metres north of the centre of Stockwood under-bridge, a distance of 520 metres.

## PART 3

### ROADS SUBJECT TO 50 MPH SPEED LIMIT

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Description</i>
1	A1081 Airport Way and the M1 Spur – the dual carriageway from its junction with the roundabout of Junction 10 of the M1 Motorway to a point immediately below the centre of the Capability Green over-bridge, a distance of 1,371 metres, including the circulatory carriageway of the Junction 10 roundabout, a distance of 590 metres.
2	M1 Junction 10 southbound diverge slip road from the end of the entry nosing for the segregated left turn lane to its junction with the roundabout of Junction 10 of the M1 Motorway, a distance of 45 metres, including the segregated left turn lane linking the southbound diverge and the M1 Spur eastbound carriageway.

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<i>(1)</i> No.	<i>(2)</i> Description
3	M1 Junction 10 southbound merge slip road from its junction with the roundabout of Junction 10 of the M1 Motorway to the start of the segregated left turn lane exit nosing, a distance of 100 metres, including the segregated left turn lane linking the southbound merge and the M1 Spur westbound carriageway.
4	Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the M1 Spur to a point 39 metres north-east of the end of the diverge nosing, a distance of 79 metres.
5	Kidney Wood Eastbound Merge Slip Road from a point 60 metres south-west of the start of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 100 metres.
6	Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 60 metres south-west of the end of the diverge nosing, a distance of 120 metres,
7	Kidney Wood Westbound Merge Slip Road from a point 74 metres north-east of the start of the merge nosing to the end of the slip road nosing at its junction with the M1 Spur, a distance of 114 metres.
8	Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 10 metres north-east of the end of the diverge nosing, a distance of 50 metres
9	Capability Green Westbound Merge Slip Road from a point 40 metres north-east of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 80 metres.

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## SCHEDULE 5

Article 13

## STREETS TO BE PERMANENTLY STOPPED UP

(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>New Street to be substituted</i>
<b>Luton Borough Council and Central Bedfordshire Council</b>	A1081 London Road	Between points A and B on the street plans, sheet 3 (being from a point 10 metres to the south of the A1081 London Road junction with M1 Junction 10a Kidney Wood Roundabout, southwards for a distance of 80 metres).	Work Nos.1, 2, 3A, 3B, 4A, 4B and 5
	London Road	Between points C and D on the street plans, sheet 3 (being from the London Road junction with M1 Junction 10a Kidney Wood Roundabout, northwards for a distance of 220 metres), including private means of access to Kidney Wood at points J and K on those plans (being respectively 87 metres and 200 metres to the north of the junction with M1 Junction 10a Kidney Wood Roundabout).	Work Nos.1, 2, 3A, 3B, 4A, 4B, 5, 6(a) and 6(c)
<b>Luton Borough Council</b>	M1 Junction 10a Kidney Wood Roundabout	Between points E and F on the street plans, sheet 3 (being part of the circulatory carriageway, from a point 25 metres west of its junction with the centreline of London Road, eastwards for a distance of 45 metres)	Work Nos.1, 2, 3A, 3B, 4A, 4B and 5



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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New Street to be substituted</i>
	Public Footpath Ref FP43	Between points G and H on the street plans, sheet 3 (being from a point 20 metres from its junction with the north-eastern highway boundary of Newlands Road to its junction with the highway boundary of M1 Junction 10a Kidney Wood Roundabout).	Work No. 7
<b>Central Bedfordshire Council</b>	Newlands Road	At point I on the street plans, sheet 3 (being private means of access to an infiltration pond to the south-east of the M1 Spur and north-east of Newlands Road to be at a point on the north-eastern highway boundary of Newlands Road 435 metres to the north-west of the junction with A1081 London Road).	Work No.1(d)

SCHEDULE 6

Article 14

TEMPORARY STOPPING UP OF STREETS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
<b>Luton Borough Council and Central Bedfordshire Council</b>	M1 Junction 10 Roundabout	Night-time closures of all or part of the roundabout will be required to facilitate the safe construction of the authorised development
<b>Central Bedfordshire Council</b>	M1 Junction 10 Northbound Diverge Slip Road	Night-time closures will be required to facilitate the safe

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(1) Area	(2) Street to be temporarily stopped up	(3) Extent of temporary stopping up
	M1 Junction 10 Northbound Merge Slip Road	construction of the authorised development  Night-time closures will be required to facilitate the safe construction of the authorised development
<b>Luton Borough Council and Central Bedfordshire Council</b>	M1 Junction 10 Southbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
<b>Central Bedfordshire Council</b>	M1 Junction 10 Southbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
<b>Luton Borough Council and Central Bedfordshire Council</b>	M1 Junction 10 Southbound Diverge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
<b>Central Bedfordshire Council</b>	M1 Junction 10 Southbound Merge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
<b>Luton Borough Council and Central Bedfordshire Council</b>	M1 Spur	Night-time closures will be required to facilitate the safe construction of the authorised development
<b>Luton Borough Council</b>	M1 Junction 10a Kidney Wood Roundabout	Night-time closures of all or short term closures of part of the roundabout will be required to facilitate the safe construction of the authorised development
<b>Luton Borough Council and Central Bedfordshire Council</b>	A1081 Airport Way	Night-time closures will be required to facilitate the safe construction of the authorised development
	Capability Green Eastbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development

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(1) Area	(2) Street to be temporarily stopped up	(3) Extent of temporary stopping up
	<p>Capability Green Westbound Merge</p> <p>A1081 London Road</p> <p>Newlands Road</p>	<p>Night-time closures will be required to facilitate the safe construction of the authorised development</p> <p>Short term closures will be required to facilitate the safe construction of the authorised development.</p> <p>Short term closures will be required to facilitate the safe construction of the authorised development.</p>
<b>Luton Borough Council</b>	<p>London Road</p> <p>Public Footpath FP43</p> <p>Newlands Road</p>	<p>Short term closures will be required to facilitate the safe construction of the authorised development.</p> <p>Closure of the footpath for the duration of the works required to facilitate the safe construction of the authorised development</p> <p>Field access to arable farmland to the north-west of the M1 Spur, north-east of Newlands Road and east of London Road, from a point on the north-eastern highway boundary of Newlands road 45 metres to the north-west of its underbridge crossing of the M1 Spur. To be stopped up during the duration of the works in order to allow the use of adjacent land for construction purposes</p>

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## SCHEDULE 7

Article 15

## ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans, sheet 3</i>	<i>(3)</i> <i>Description of access</i>
<b>Luton Borough Council</b>	T1	A temporary vehicular access from a point on the western highway boundary of London Road 165 metres to the north of its junction with the existing M1 Junction 10a Kidney Wood Roundabout. This temporary access is to provide access and egress for site vehicles and plant and site workers' personal vehicles to the construction compound and to the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T2	A temporary vehicular access to be provided from the north-western quadrant of the proposed Kidney Wood Northern Roundabout. This temporary access is to provide access and egress for site vehicles and plant and site workers' personal vehicles to and from the construction compound and to or from the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T3	A temporary vehicular access to be provided from the north-eastern highway boundary of Newlands Road, from a point 45 metres to the north-west of the underbridge crossing of the M1 Spur. This temporary access is to be located at an existing gated access to arable farmland, and is to provide access and egress for site vehicles and plant to or from those aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T4	A temporary vehicular access to be provided from a point on the south-western highway boundary of Newlands Road 30 metres to the north-west of the underbridge crossing of the M1 Spur. This temporary access is to

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans, sheet 3</i>	<i>(3)</i> <i>Description of access</i>
		provide access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the north-west of the M1 Spur and to the south-west of Newlands Road. Upon completion of the works, this access is to be replaced with a permanent pedestrian private means of access at the same location that is to provide access to maintain highways equipment.
<b>Central Bedfordshire Council</b>	T5	A temporary vehicular access to be provided from a point on the south-western highway boundary of Newlands Road 25 metres to the south-east of the underbridge crossing of the M1 Spur. This temporary access is to provide access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur and to the south-west of Newlands Road.
	T6	A temporary vehicular access to be provided from a point on the north-eastern highway boundary of Newlands Road 30 metres to the south-east of the underbridge crossing of the M1 Spur. This temporary access is to provide access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.
	T7	A temporary vehicular access to be provided from a point on the north-eastern highway boundary of Newlands Road 235 metres to the north-west of its junction with the A1081 London Road (south). This temporary access is to provide access and egress for site vehicles and plant and site workers' personal vehicles to the satellite construction compound and to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans, sheet 3</i>	<i>(3)</i> <i>Description of access</i>
	T8	A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 305 metres to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access is to provide access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.
	T9	A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 110 metres to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access is to provide access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.

SCHEDULE 8

Article 20(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(2)</i> <i>Purpose for which rights over the land may be acquired</i>
1A	Provision of diverted public right of way.
3B	Construction, inspection and maintenance of a buried drainage pipe.
3D	Construction, inspection and maintenance of a reinforced earthworks slope.

SCHEDULE 9

Article 20(4)

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

*Compensation enactments*

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

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973<sup>(28)</sup> has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there are substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there are substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

*Application of the 1965 Act*

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

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(28) 1973 c. 26.

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“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard is to 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 acquisition of the right or the imposition of the 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.”

5. For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
  - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
  - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the M1 Junction 10a (Grade Separation) Order 2013<sup>(29)</sup> (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

6. 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),

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(29) S.I. 2013/2808



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

7. Section 11 of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the undertaker has served notice to treat in respect of any right 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 (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) 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.

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) is modified so as to enable the undertaker, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 10

Article 25

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
<b>Luton Borough Council</b>	1	To provide access to the area of the works to the north-east of Newlands Road and north-west of the M1 Spur form Newlands Road.	All works
	1A	Construction of a boundary fence and diverted public right of way.	Work No.1, Work No.2, Work No.4A and Work No. 7
	1B	Construction of a boundary fence.	Work No.1, Work No.2 and Work No.4A.
	1D	Provision of a site compound, including but not limited to site	All works

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(1) <i>Location</i>	(2) <i>Number of land shown on land plans, sheet 1</i>	(3) <i>Purpose for which temporary possession may be taken</i>	(4) <i>Relevant part of the authorised development</i>
		offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.	
<b>Luton Borough Council and Central Bedfordshire Council</b>	2B	Carrying out works to trees, construction of fencing and planting of a hedgerow.	Work No.12
<b>Luton Borough Council</b>	2C	Construction and use of the vehicular access to the site compound, and construction of part of a turning head.	All works
	2H	To provide access during the works and to allow the construction of new means of access.	Work No.1
	2I	To allow the realignment of London Road and the associated works to the verges, footways and earthworks.	Work No.2 and Work No.6
	2J	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction.	Work No.1
<b>Central Bedfordshire Council</b>	3A	Storage of materials and works to infill existing burrow pit.	All works
	3B	Construction of drainage pipes, access, the storage of materials and works to infill existing burrow pit.	Work No. 8
	3C	Access to the area of the works to the south-east of the M1 Spur and to the north-east of Newlands	All works

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	<p>3D</p> <p>3E</p> <p>3F</p> <p>4B</p>	<p>Road, and the storage of materials and plant</p> <p>Excavation of existing tip area and works to infill to original ground levels.</p> <p>Use as a satellite compound for works to the south-east of the M1 Spur, including but not limited to site offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.</p> <p>Regrading of part of earth bunds that extend beyond the proposed highway boundary</p> <p>Carrying out works to trees, and construction of fencing</p>	<p>Work No. 9</p> <p>All works</p> <p>Work No.1 and Work No.3A</p> <p>Work No.1 and Work No.3B</p>
<p><b>Luton Borough Council and Central Bedfordshire Council</b></p>	<p>5A</p> <p>6C</p> <p>6D</p>	<p>Carrying out works to trees, and construction of fencing</p> <p>To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.</p> <p>To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a</p>	<p>Work No.1 and Work No.3B</p> <p>Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A and Work No.4B</p> <p>Work No.1, Work No.3A,</p>

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(1) <i>Location</i>	(2) <i>Number of land shown on land plans, sheet 1</i>	(3) <i>Purpose for which temporary possession may be taken</i>	(4) <i>Relevant part of the authorised development</i>
		continuous link between the M1 Spur and A1081 Airport Way.	Work No.3B, Work No.4A and Work No.4B
	6E	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3B and Work No.4B
	7C	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A and Work No.4B
	7D	To allow the provision of a continuous link between the M1 Spur and A1081 Airport Way, the widening of A1081 Airport Way and the associated improvements to Capability Green junction.	Work No.1, Work No.3B and Work No.4B
	7E	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction.	Work No.1
	7F	To allow the provision of the realigned A1081 London Road, the modification of A1081 London Road to form Old London Road (South) to provide	Work No.2, Work No.5 and Work No.10

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<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
		access to Kidneywood House and Bull Wood Cottages, access to the works, the construction of the access to the proposed attenuation and infiltration ponds and the improvements to Newlands Road and its junction with A1081 London Road.	

SCHEDULE 11

Article 31

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Reference of trees on environmental context plans</i>	<i>(3)</i> <i>Work to be carried out</i>
Birch, oak, ash, rowan and hornbeam.	Kidney Wood Tree Preservation Order shown on sheets 1 and 2	Removal, trimming, lopping and coppicing of trees within Kidney Wood Tree Preservation Order to be carried out to facilitate the construction of the authorised development and to ensure its future viability and stability.

SCHEDULE 12

Article 34

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF HIGHWAY AUTHORITIES

1. Unless otherwise agreed in writing between the undertaker and the highway authority concerned, the following provisions of this Schedule have effect in relation to any highway for which the undertaker is not the highway authority.

2. In this Schedule—

“highway” means a street vested in or maintainable by the highway authority; and

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

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3. Wherever in this Schedule provision is made with respect to the approval or consent of the highway authority, that approval or consent must be given in writing and may be given subject to such reasonable terms and conditions as the highway authority may impose but must not be unreasonably withheld.

4. Before commencing any part of the authorised development the undertaker must submit to the highway authority for its approval in writing proper and sufficient plans and must not commence that part of the authorised development until those plans have been approved or settled by arbitration in accordance with article 37 (arbitration).

5. If, within 21 days after any plans have been submitted to a highway authority under paragraph 4, it has not intimated its disapproval and the grounds of disapproval, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency standards.

6. In the event of any disapproval of plans by a highway authority under paragraph 4, the undertaker may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 21 days of the plans being re-submitted, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency and local highway authority standards.

7. Except in an emergency or where reasonably necessary to secure the safety of the public, no direction or instruction is to be given by the highway authority to the contractors, servants or agents of the undertaker regarding construction of the authorised development without the prior consent in writing of the undertaker but the highway authority is not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions under this paragraph.

8. To facilitate liaison with the undertaker, the highway authority concerned must provide so far as is reasonably practicable a representative to attend meetings arranged by the undertaker about the authorised development.

9. The authorised development must be completed in accordance with the reasonable requirements of the highway authority or, in case of difference between the undertaker and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration in accordance with article 37.

## PART 2

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

#### **Application and interpretation**

10.—(1) For the protection of the statutory undertakers referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, have effect.

(2) In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

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- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989<sup>(30)</sup>), belonging to or maintained by that statutory undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes and other apparatus belonging to or maintained by the 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<sup>(31)</sup>; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 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;

“emergency works” has the same meaning as in section 52 of the 1991 Act;

“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, across, along or upon land;

“plans” includes sections and method statements;

“undertaker” means the undertaker as defined in article 2 (interpretation); and

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(32)</sup>;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and,
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

(3) Except in the case of paragraph 11, this Part of this Schedule does not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

(4) Article 28 (apparatus and rights of statutory undertakers in stopped up streets) does not apply in relation to a statutory undertaker referred to in this Part of this Schedule.

(5) Paragraphs (1) and (2) of article 29 (recovery of costs of new connections) have effect as if it referred to apparatus removed under this Part of this Schedule.

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<sup>(30)</sup> 1989 c. 29.

<sup>(31)</sup> 1991 c. 56.

<sup>(32)</sup> 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).

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

**11.**—(1) Where any street is stopped up under article 13 (permanent stopping up of streets), any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up but nothing in this sub-paragraph affects any right of the undertaker or of the statutory undertaker to require the removal of that apparatus under paragraph 13 or the power of the undertaker to carry out works under paragraph 15.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 14 (temporary stopping up of streets), and subject always to the power of the undertaker to make provisions for the alteration of such apparatus, the statutory undertaker is at liberty at all times and after giving reasonable notice except in the case of emergency to take all necessary access and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to inspect, repair, maintain, renew, alter, remove or use any apparatus which at the time of the temporary stopping up or diversion was in that highway.

### **Acquisition of Apparatus**

**12.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire under this Order any apparatus or rights or interests of the statutory undertaker to access, maintain or otherwise assert their rights in relation to such apparatus otherwise than by agreement.

### **Removal of apparatus**

**13.**—(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 statutory undertaker to use, maintain, repair, renew, alter or inspect 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 statutory undertaker in question, and the provisions of sub paragraph to (5) apply in relation to such works.

(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 statutory 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 statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the use, maintenance, repair, renewal, alteration and inspection 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 statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonably necessary to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, but such obligation does not extend to the requirement for the statutory undertaker to use its compulsory purchase powers to achieve this end.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed



between the statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(5) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 37, and subject to the grant to the statutory 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 statutory undertaker in question 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 the statutory undertaker in question, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of, the statutory 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**

**14.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory undertaker facilities and rights for the construction, use, maintenance, renewal and inspection 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 statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus the arbitrator 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 or the traffic on the highway; 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 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 the same are to be granted are in the opinion of the arbitrator less favourable on the whole to the statutory 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 the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection**

**15.**—(1) Not less than 28 days before commencing the execution of any works authorised by this Order that are near to or will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 13(2), the undertaker must submit to the statutory undertaker in question a plan of the works to be executed.

(2) Those works are to be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance

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with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within 21 days after the submission to them of a plan, section and description under sub-paragraph (1).

(4) If a statutory 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 10 to 14 apply as if the removal of the apparatus had been required by the undertaker under paragraph 13(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan of those works subsequently and must comply with sub-paragraph (2) so far as reasonably practicable in the circumstances.

## **Expenses**

**16.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker reasonable expenses incurred by that statutory undertaker in, or in connection with—

- (a) the inspection, removal and relaying or replacing, or alteration or protection of any apparatus or the construction of any new or alternative apparatus or connections to apparatus which may be required in consequence of the execution of any such works as are required under this Part of this Schedule, including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus;
- (b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (c) 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 is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, 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, except where this has been solely due to using the nearest currently available type; 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 37 (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 statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess except where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs are to 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant to sub paragraph (2)) 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 statutory 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.

### **Indemnity**

**17.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of the authorised development, or any works required under this Schedule 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 the undertaker) in the course of carrying out such works, 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 other property of a statutory undertaker or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) indemnify that statutory undertaker for any other expenses, loss, damages, claims, penalty or costs incurred by or recovered from that statutory 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 statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand received under sub-paragraph (1) 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.

### **Enactments and agreements**

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

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### **Co-operation**

19. Where in consequence of the proposed construction of any of the authorised development the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 13(2) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 15(2), the undertaker and the statutory undertaker must use their 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 the safe and efficient operation of the statutory undertaker's undertaking.

### **Access**

20. If, in consequence of the exercise of any powers 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 the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **PART 3**

### **FOR THE PROTECTION OF NATIONAL GRID**

#### **Interpretation**

21. In this Part of this Schedule—

“National Grid” means National Grid Gas Plc whose registered address is 1-3 Strand, London WC2N 5EH (“National Grid”);

“the high pressure gas main” means the Kinsbourne Green to Dallow Road high pressure gas main; and

“plans” means all drawings, designs, sections, specifications, method statements and other documentation that are reasonably necessary to properly and sufficiently describe the work to be executed.

#### **High pressure gas main: application of Parts 2 and 3**

22.—(1) Subject to sub-paragraphs (2) and (3), this Part of this Schedule applies to the high pressure gas main in addition to Part 2.

(2) Paragraph 23 of this Part of this Schedule applies to the high pressure gas main instead of paragraph 15 of Part 2.

(3) Paragraph 23 of this Part of this Schedule (except in the case of paragraph 23(6)) has effect including in circumstances where the high pressure gas main is regulated by the provisions of Part 3 of the 1991 Act, and in those circumstances paragraphs 16 to 20 of Part 2 have effect, except as provided for in paragraph 24 of this Part.

#### **High pressure gas main: protection**

23.—(1) Not less than 42 days before commencing the execution of any works authorised by this Order which will or may be situated on, over or under the high pressure gas main, or within 3 metres respectively from the high pressure gas main measured in any direction, or which involve embankment works within 3 metres of the high pressure gas main, the undertaker must submit to National Grid detailed plans describing—

(a) the exact position of those works;

- (b) the level at which those works are proposed to be constructed or renewed;
  - (c) the manner of their construction or renewal; and
  - (d) the position of the high pressure gas main.
- (2) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) applies until National Grid has given written approval of the plans so submitted.
- (3) Any approval of National Grid under sub-paragraph (2)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (4);
  - (b) must not be unreasonably withheld.
- (4) In relation to a work to which sub-paragraph (1) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to the high pressure gas main.
- (5) Works to which this paragraph applies must be executed only in accordance with—
- (a) the plan approved under sub-paragraph (2); and
  - (b) such reasonable requirements as may be made in accordance with sub-paragraph (4) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it,
- and National Grid is entitled to watch and inspect the execution of those works.
- (6) If in consequence of the works proposed by the undertaker National Grid reasonably requires the removal of the high pressure gas main and gives written notice to the undertaker of that requirement, paragraphs 10 to 14 apply as if the removal of the apparatus had been required by the undertaker under paragraph 13(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, instead of the plan, previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.
- (8) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan, of those works subsequently and must comply with—
- (a) sub-paragraph (5) so far as reasonably practicable in the circumstances; and
  - (b) sub-paragraph (9) at all times.
- (9) At all times when carrying out any works authorised under this paragraph the undertaker must comply with National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installations requirements for third parties T/SP/SSW27” and HSE’s “HS(G)47 Avoiding danger from underground services”.

### **Conduct of claims and demands**

**24.**—(1) Sub-paragraph (2) applies instead of paragraph 17(3) of Part 2 in relation to claims and demands made against National Grid under that paragraph.

(2) National Grid must give the undertaker reasonable notice of any such claim or demand received under paragraph 17(1) of Part 2 and no settlement or compromise is to be made without first consulting the undertaker and considering the undertaker’s representations (such representations not to be unreasonably withheld or delayed).

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## EXPLANATORY NOTE

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

This Order authorises Luton Borough Council (referred to in this Order as the undertaker) to make improvements to Junction 10a of the M1, including the removal of the existing Junction 10a roundabout and provision of a continuous and widened carriageway between the M1 Junction 10 and A1081 Airport Way, and new roundabouts and slip roads giving access to London Road, and to carry out all associated works. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land temporarily for this purpose. The Order also makes provision in connection with the designation and maintenance of the new section of highway.

A copy of the various plans, the book of reference and other documents mentioned in this Order and certified in accordance with article 35 of this Order (certification of plans etc.) may be inspected free of charge during working hours at Luton Borough Council, Town Hall, Luton LU1 2BQ.