
STATUTORY INSTRUMENTS

2013 No. 648

The Hinkley Point C (Nuclear Generating Station) Order 2013

PART 1

General provisions

Preliminary

Citation and commencement

1. This Order may be cited as the Hinkley Point C (Nuclear Generating Station) Order 2013 and shall come into force on 9th April 2013.

Interpretation

2.—(1) In this Order, unless the context requires otherwise—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1980 Act” means the Highways Act 1980(3);

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- (1) 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.
- (2) 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.
- (3) 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), 1(3) and 1(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 (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.

- “the 1990 Act” means the Town and Country Planning Act 1990(4);
- “the 1991 Act” means the New Roads and Street Works Act 1991(5);
- “the 1995 Order” means the Town and Country Planning (General Permitted Development) Order 1995(6);
- “the 2008 Act” means the Planning Act 2008;
- “AIL” means an abnormal indivisible load as defined in paragraph 2 of Schedule 1 (abnormal indivisible load vehicles) to the Road Vehicles (Authorisation of Special Types) (General) Order 2003(7);
- “approved plans” means the plans listed in Part 3 of Schedule 1 (approved plans) and such revised or supplemental plans as may be approved pursuant to the requirements;
- “authorised development” means the development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order, but does not include the temporary jetty works;
- “authorised project” means the authorised development and the temporary jetty works authorised by this Order;
- “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 meaning given in section 329 of the 1980 Act (interpretation);
- “discharging authority” means the body responsible for giving any agreement or approval required by a requirement;
- “footpath implementation plan” means a written plan agreed between the undertaker and the highway authority for creation or improvement of a footpath to a specified standard;
- “HPC development site” means the land within the Order limits shown on sheet nos. 2, 3 and 4;
- “land” includes land covered by water, any interest in land or right in, to or over land;
- “land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;
- “Order limits” means the limits shown on the works plans within which the authorised project may be carried out;
- “owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(8) (interpretation);
- “permanent development site” means the land within the permanent development site boundary as shown on plan HINK-A1-SL-00-GA-010 (Site Layout Plan (Operational));

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- (4) 1990 c. 8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act (c. 21), and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule 17 to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.
- (5) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Part 3 of the 1991 Act was amended by Part 4 of the Traffic Management Act 2004 (c. 18). Section 74 was amended, and sections 74A and 74B inserted, by sections 255 and 256 of the Transport Act 2000 (c. 38). There are other amendments to the 1991 Act but they are not relevant to this Order.
- (6) S.I. 1995/418; relevant amending instruments are S.I. 1999/293, S.I. 2003/2155 and S.I. 2011/1824.
- (7) S.I. 2003/1998.
- (8) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

“permanent limits” means the limits of land for the purpose of article 24 (compulsory acquisition of land) as shown shaded pink on the land plans;

“relevant planning authority” means, in any given provision of this Order, the district planning authority for any area of land that the provision relates to, i.e. West Somerset District Council and/or Sedgemoor District Council, as the case may be;

“requirements” has the meaning given in article 3 (development consent for authorised development etc.);

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

“site preparation permission” means the planning permission in respect of land to the West of Hinkley Point, Stogursey, Bridgwater TA5 1TP granted by West Somerset District Council on 27th January 2012, with reference number 3/32/10/037;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act (which make provision about orders affecting statutory undertakers’ land);

“street” means a street within the meaning of section 48 of the 1991 Act (streets, street works and undertakers), 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 meaning given in section 49 of the 1991 Act (the street authority and other relevant authorities);

“temporary associated development works” means Work Nos. 3, 4A, 5A, 7A, 8A(2)(a) to (h), 9A, 10 and 11;

“temporary jetty demolition works” means Work No. TJ0;

“temporary jetty works” means Work Nos. TJ1, TJ2 and TJ3 described in Part 2 of Schedule 1 (temporary jetty works) and any other works authorised by Part 2 of this Order (provisions relating to temporary jetty works) or, as the case may require, any part of those works, but excluding the temporary jetty demolition works;

“tree preservation order” has the meaning given in section 198 of the 1990 Act (power to make tree preservation orders);

“undertaker” means NNB Generation Company Limited (Company number 06937084);

“undertaking” mean the generation of electricity by the undertaker as authorised from time to time;

“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.

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

(4) All areas described in square metres in the book of reference are approximate.

(5) A reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 9A”), is a reference to the work so designated in Part 1 or 2 of Schedule 1.

(6) Unless the context requires otherwise, a reference in this Order to a numbered sheet (for example, “sheet no. 3”) is a reference to the sheet so numbered in the works plans.

(7) A reference in this Order to a document or plan required to be submitted for certification under article 43(1)(e) (certification and construction of plans and documents) is a reference to the version of that document or plan that has been certified under article 43.

(8) A reference in the Schedules to a “relevant site” is a reference to the site of that name shown in the right of way plans and land plans.

(9) In this Order, 10-digit references prefaced by the letters “ST” refer to the corresponding Ordnance Survey National Grid reference points.

Principal powers

Development consent for authorised development etc.

3.—(1) Subject to the provisions of Schedule 2 (requirements) (“the requirements”) and the other provisions of this Order, the undertaker is granted development consent for the authorised development, to be carried out in the lines or situations shown on the works plans and in accordance with the approved plans.

(2) In constructing or maintaining any of the authorised development, the undertaker may deviate laterally from the lines or situations shown on the works plans within the limits of deviation relating to that work shown on those plans.

(3) In constructing or maintaining Work No. 2A, Work No. 2C and Work No. 2E, the undertaker may deviate vertically to any extent provided that no part of these works is less than 10 metres below the seabed or more than 50 metres below the seabed.

(4) In constructing or maintaining Work No. 2G the undertaker may deviate vertically to any extent provided that no part of these works is more than 25 metres below the seabed.

(5) Paragraphs (1), (2), (3) and (4) only authorise the carrying out of works within the Order limits.

Effect of the Order on the site preparation permission

4.—(1) If the undertaker serves a notice on West Somerset District Council under this article—

- (a) the undertaker shall cease to carry out development under the site preparation permission; and
- (b) the conditions of the site preparation permission shall cease to have effect, except for Conditions G4, R1, R2, R3, R4, R5 and R6.

(2) The undertaker may not carry out Work No. 1A under this Order until notice has been served under paragraph (1).

(3) Notwithstanding paragraph (2), the undertaker may exercise any other powers under this Order in respect of any part of the authorised project prior to or following service of notice under paragraph (1).

(4) Without prejudice to the generality of paragraph (3), the undertaker may discharge any requirement at any time prior to or following the service of notice under paragraph (1).

(5) Where details, plans or any other matters have been approved or agreed by West Somerset District Council pursuant to a condition of the site preparation permission in column (1) of Schedule 3 prior to the date on which the undertaker serves notice under paragraph (1) they shall be deemed to have been approved for the purpose of the corresponding requirement in column (2) of Schedule 3.

Maintenance of authorised project

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

Authorisation of use

6. Subject to the provisions of this Order and to the requirements the undertaker may operate and use the authorised project.

Benefit of Order

7. Subject to article 8 (consent to transfer benefit of Order), the provisions of this Order shall have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

8.—(1) 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), shall 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) shall be subject to the same restrictions, liabilities and obligations (including development consent obligations within the meaning of section 106A of the 1990 Act) as would apply if those benefits or rights were exercised by the undertaker.

Application of the 1991 Act

9.—(1) Where the undertaker carries out works under this Order in relation to a highway which consists of or includes a carriageway and the works carried out are—

- (a) of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of the 1991 Act (which defines what highway authority works are major highway works); or
- (b) works which, had they been executed by the highway authority, could have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageway and roundabouts),

the works shall be treated for the purposes of Part 3 of the 1991 Act (street works) as if they were major highway works carried out by the highway authority.

(2) In the application of Part 3 of the 1991 Act to works within paragraph (1) by virtue of paragraph (1), the references in that Part to the highway authority concerned shall be construed as references to the undertaker.

Application of the 1990 Act

10.—(1) This article applies to the resumption of the use of land used for the temporary associated development works for the use for which it was normally used before this Order was made.

(2) Where this article applies, section 57(2) of the 1990 Act (planning permission required for development) shall apply as if the development consent granted under this Order were planning permission granted for a limited period.

Application of the 2010 Regulations

11.—(1) The Community Infrastructure Levy Regulations 2010⁽⁹⁾ shall apply to the authorised development as if regulation 5(2) of those Regulations (meaning of “planning permission”) referred to development consent which is deemed to be granted for a limited period by an order made under section 114(1)(a) of the 2008 Act (grant or refusal of development consent) rather than to planning permission which is granted for a limited period.

(2) Development consent is deemed to be granted for a limited period for the temporary associated development works, Work No. 1A(b) and any other temporary buildings or works authorised by this Order.

Defence to proceedings in respect of statutory nuisance

12.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁰⁾ (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 shall 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 project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974⁽¹¹⁾; or

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

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

(2) Sections 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) and section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded) of the Control of Pollution Act 1974 shall 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 project.

Streets

Street works

13.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in columns (1) and (2) of Schedule 4 (streets subject to street works) as is within the Order limits for the relevant site specified in column (3) of Schedule 4 and may—

⁽⁹⁾ S.I. 2010/948, amended by S.I. 2011/987.

⁽¹⁰⁾ 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

⁽¹¹⁾ 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to this Order.

- (a) break up or open the street, or any sewer, drain or tunnel under it;
 - (b) tunnel or bore under the street;
 - (c) place apparatus in the street;
 - (d) maintain apparatus in the street or change its position; and
 - (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).
- (2) In this article “apparatus” has the meaning given in section 105(1) of the 1991 Act.

Stopping up of footpaths on HPC development site

14.—(1) Subject to paragraphs (2) and (3), the undertaker may, in connection with the carrying out of the authorised project—

- (a) stop up each of the footpaths specified in columns (1) and (2) of Part 1 of Schedule 5 (footpaths to be permanently stopped up on HPC development site) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of that Part of that Schedule; and
- (b) temporarily stop up each of the footpaths specified in columns (1) and (2) of Part 2 of Schedule 5 (footpaths to be temporarily stopped up on HPC development site) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of that Part of that Schedule.

(2) No footpath specified in columns (1) and (2) of Part 1 or columns (1) and (2) of Part 2 of Schedule 5 shall be wholly or partly stopped up under this article unless the diversion route specified on the rights of way plans between points DR1/1 and DR1/2, and between points DR1/4, DR1/5, DR1/6, DR1/7, DR1/8, DR1/9 and DR1/10, DR1/11 and DR1/12, and between points DR1/5 and DR1/13 is first provided by the undertaker, to the reasonable satisfaction of the highway authority.

(3) The diversion route provided under paragraph (2), or such alternative diversion route connecting the points listed in paragraph (2) as may from time to time be agreed by the highway authority, shall be subsequently maintained by the undertaker until the completion and opening of the footpaths on the HPC development site specified in columns (1), (2) and (3) of Schedule 7 (status of footpaths created or improved) in accordance with any relevant footpath implementation plan.

Permanent stopping up of streets

15.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 6 (streets to be permanently stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of those Parts of that Schedule.

(2) Except for footpath BW5/8 between points X1/1 and X1/2, no street specified in columns (1) and (2) of Part 1 of Schedule 6 (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up between the commencement and termination points for the stopping up of the street is first provided and is subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 6 (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless at least one of the conditions specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(4) The conditions referred to in paragraph (3) are that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street shall be extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised project so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(6) Where the section of Wick Moor Drove between points S1/1 and S1/2 has been stopped up under this article, all interests and rights in the land on which that section of street is situated shall be extinguished.

(7) The interests and rights to which this section applies are any easement, restriction, restrictive covenant, liberty, privilege, right or advantage annexed to land, including any natural right to support.

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

(9) This article is subject to article 36 (apparatus etc. of statutory undertakers).

(10) Where the section of Wick Moor Drove between points S1/1 and S1/2 is to be stopped-up under this article, then in addition to any of the conditions mentioned in paragraph (4)(a) to (d), the consent of the owner of Hinkley Point A (being all that freehold land and the buildings and structures erected on it at Hinkley Point, Somerset, which comprises the whole of the land registered under title number ST264472) to such stopping-up must first be obtained but such consent shall be deemed given if, prior to such stopping-up, an agreement has been completed providing for the grant of rights of way to the owner of Hinkley Point A immediately following the stopping-up, substantially in the form of the draft deed of easement relating to Wick Moor Drove, Hinkley Point, Somerset between EDF Energy Nuclear Generation Limited (1) Nuclear Decommissioning Authority (2) National Grid Electricity Transmission Plc (3) and EDF Development Company Limited (4).

Status of footpaths created or improved

16. With effect from the date on which the highway authority is satisfied that the footpaths specified in columns (1) and (2) of Schedule 7 (status of footpaths created or improved) have been created or improved to the standard specified in the footpath implementation plan, the footpaths in question shall be deemed to have the status specified in column (3) of that Schedule.

Temporary stopping up of streets

17.—(1) The undertaker, during and for the purposes of carrying out the authorised project, 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 (2), prevent all persons from passing along the street.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 8 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of that Schedule.

(4) The undertaker shall not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (3) 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.

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

Access to works

18. The undertaker may, for the purposes of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, as specified in columns (1) and (2) of Schedule 9 (access to works) by reference to the rights of way plans whose titles refer to the relevant sites specified in column (3) of that Schedule; and
- (b) with the approval of the relevant planning authority, after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

Construction and maintenance of new, altered or diverted streets

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

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall, when completed to the reasonable satisfaction of the highway authority, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

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

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

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;

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

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

Agreements with street authorities

- 20.**—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street authorised by this Order;
 - (b) any stopping up, alteration or diversion of a street authorised by this Order; or
 - (c) the carrying out in the street of any of the works referred to in article 13(1) (street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and other matters as the parties consider appropriate.

Supplemental powers

Discharge of water

21.—(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 project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991⁽¹²⁾ (right to communicate with public sewers).

(3) The undertaker shall 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.

- (4) The undertaker shall 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 shall not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.

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

⁽¹²⁾ 1991 c. 56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to this section which are not relevant to this Order.

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

(7) This article does not permit any activity listed in paragraph 3(1) of Schedule 21 to the Environmental Permitting (England and Wales) Regulations 2010⁽¹³⁾ (water discharge activities).

(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, a harbour authority within the meaning of section 57 of the Harbours Act 1964⁽¹⁴⁾ (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park 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⁽¹⁵⁾ have the same meaning as in that Act.

Protective work to buildings

22.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

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

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

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

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

(5) Before exercising—

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

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

⁽¹³⁾ S.I. 2010/675, to which there are amendments not relevant to this Order.

⁽¹⁴⁾ 1964 c. 40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

⁽¹⁵⁾ 1991 c. 57, amended by sections 100(1) and 120(1) of, paragraph 128 of Schedule 22 to, and Schedule 24 to the Environment Act 1995 (c. 25).

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 45 (arbitration).

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

(8) Where—

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

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

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

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

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

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

Authority to survey and investigate the land

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

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality 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) shall, if so required entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

(a) in 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.

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

Powers of acquisition

Compulsory acquisition of land

24.—(1) The undertaker may—

(a) acquire compulsorily so much of the land within the permanent limits and described in the book of reference as is required for the authorised project or to facilitate it, or as is incidental to it; and

(b) use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the undertaking.

(2) Nothing in paragraph (1) shall authorise the undertaker to acquire compulsorily—

(a) any of the land or interests in land specified in Schedule 10 (land or interests in or rights over land not to be acquired compulsorily) that are held by the party mentioned in the third column of that Schedule; or

(b) any rights over those lands that are held by that party,

but the undertaker may acquire by agreement any part of those lands, or any rights over them, and use them, for the purpose referred to in paragraph (1).

(3) This article is subject to article 30 (acquisition of subsoil only), article 32 (rights under or over streets) and article 48 (Crown rights).

Statutory authority to override easements and other rights

25.—(1) The carrying out or use of development authorised by this Order and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

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

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

(2) The undertaker shall pay compensation to any person whose land is injuriously affected by—

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

(b) a breach of a restriction as to user of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act shall be applied to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

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

- (a) no notice to treat shall be served under Part 1 of the 1965 Act (which makes provision for compulsory acquisition under the Acquisition of Land Act 1981); and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 29 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(16),

in respect of the acquisition by the undertaker of land for the authorised project under this Order.

(2) Subject to paragraph (3), the authority conferred by article 33 (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1).

(3) Paragraph (2) shall not prevent 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

27.—(1) The undertaker may acquire compulsorily the new rights described in the book of reference and shown on the land plans.

(2) Subject to section 8 of the 1965 Act (provisions as to divided land), as substituted by article 31 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

(3) Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

Private rights of way

28.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be 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 of way over land owned by the undertaker which, being within the Order limits, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

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

(16) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Sections 10 and 11 and Schedule 1 were amended by S.I. 2009/137. Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 51); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 35 (apparatus and rights of statutory undertakers in land acquired or used) applies.

(6) Paragraphs (1) to (3) shall have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of 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 shall not apply to any right of way specified in the notice; and

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

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

- (a) is made with a person in or to whom the right of way 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 shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

29.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 shall apply as if this Order were a compulsory purchase order.

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

(3) In section 3 (preliminary notices), for subsection (1) there shall be 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 shall 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 shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be 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 shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

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

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

Acquisition of subsoil only

30.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 24 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 land under paragraph (1), the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 31 from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

31.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the Lands Chamber of the Upper Tribunal (“the tribunal”).

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or

- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

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

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) shall 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 appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who

suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) 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 authorised project

33.—(1) The undertaker may, in connection with the carrying out of the authorised project—

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 12 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule;
- (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 works specified in relation to that land in column (3) of Schedule 12, 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 shall 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 after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 12 (land of which temporary possession may be taken).

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article or restore the land on which any works have been constructed under paragraph (1)(d).

(5) The undertaker shall 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 any power conferred by this article.

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

(7) Nothing in this article shall affect 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 project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 27 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 30.

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

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

(11) Nothing in this article shall prevent the taking of temporary possession more than once in relation to any land specified in Schedule 12.

Temporary use of land for maintaining authorised project

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

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall 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 project 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 shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall 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.

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

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

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

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

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

Apparatus and rights of statutory undertakers in land acquired or used

35.—(1) Subject to the following provisions of this paragraph and article 37 (recovery of costs of new connection), sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers, etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land acquired under this Order, or which is held by the undertaker and is appropriated

or used (or about to be used) by it for the purposes of the Order or for any connected purpose, and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential to the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by paragraph (1), references to the appropriate Minister are references to the Secretary of State.

Apparatus and rights of statutory undertakers in stopped-up streets

36.—(1) Where a street is stopped up under article 15 (permanent stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street shall have 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 15, 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 shall—

- (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 shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall 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 shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall 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)) shall, 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) shall not apply where the authorised project 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 shall 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 shall 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 meaning given in Part 3 of the 1991 Act;

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

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003⁽¹⁷⁾ (interpretation).

Recovery of costs of new connections

37.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 35 any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be 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) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 35, 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,

shall be 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 shall not have effect in relation to apparatus to which article 36 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

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

“public utility undertaker” has the meaning given in section 329 of the 1980 Act.

⁽¹⁷⁾ 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

Miscellaneous and general

Suspension of restriction on development of Bridgwater C

38.—(1) The restriction on the use of restricted land imposed in the transfer dated 5th August 1993 made between (1) Sedgemoor District Council (2) EBC Developments Limited and (3) Safeway Stores Plc and enforceable under section 33 of the Local Government (Miscellaneous Provisions) Act 1982⁽¹⁸⁾ (enforceability by local authorities of certain covenants relating to land) shall be suspended—

- (a) as from the date of acquisition of the restricted land or any part of it by the undertaker, whether compulsorily or by agreement;
- (b) on the date of entry on the restricted land or any part of it by the undertaker under section 11(1) of the 1965 Act (power of entry); or
- (c) on appropriation of the restricted land or any part of it by the undertaker for the purposes of this Order,

whichever is the earlier, for so long as the restricted land is used by the undertaker or any other person for the purpose of the construction or use of Work No. 5A or for student accommodation for Bridgwater College and ancillary, subsidiary and related purposes.

(2) In this article—

“Bridgwater College” means the tertiary college of that name whose main address is Bath Road, Bridgwater, Somerset, TA6 4PZ; and

“restricted land” means the parcels of land shown as BRI_C_1, BRI_C_5, BRI_C_6 and BRI_C_7 on sheet no. 3 of the land plans.

Application of landlord and tenant law

39.—(1) This article applies to—

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

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

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

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

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

⁽¹⁸⁾ 1982 c. 30. Section 33(1) was amended by section 32 of, and paragraph 6 of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1982 Act which are not relevant to this Order.

Operational land for purposes of the 1990 Act

40. Development consent granted by this Order shall 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) in respect of—

- (a) the permanent development site;
- (b) land in respect of which Work No. 1A(m) and Work No. 1B (new site access road) are authorised;
- (c) land in respect of which Work No. 1A(q) (emergency access road) is authorised;
- (d) land in respect of which Work No. 8A(1)(a) to (h) (the refurbishment and extension of Combwich Wharf) is authorised; and
- (e) land in respect of which Work No. 8A(2)(c) (existing access road) is authorised.

Felling or lopping of trees

41.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, 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 project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to persons using the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall 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, shall be determined under Part 1 of the 1961 Act.

Trees subject to tree preservation orders

42.—(1) The undertaker may fell or lop any tree described in column (1) of Schedule 13, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

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

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute 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, shall be determined under Part 1 of the 1961 Act.

Certification and construction of plans and documents

43.—(1) The undertaker shall, 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 land plans;
- (c) the rights of way plans;

- (d) the works plans; and
- (e) any other plans or documents referred to in this Order (other than enactments, British Standards and other published documents not produced for the purposes of the authorised project),

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

(2) A plan or document certified under paragraph (1) shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) This paragraph applies where a plan or document certified under paragraph (1)—

- (a) referred to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identified that provision by a number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made.

(4) Where paragraph (3) applies, the reference in the plan or document concerned shall be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made, having regard to the Secretary of State's published comparison of the Order as made with the draft (without sequential numbering) dated 31st August 2012.

Service of notices

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

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (9), by electronic transmission.

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

(3) For the purposes of section 7 of the Interpretation Act 1978⁽¹⁹⁾ (references to service by post) 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 an 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) Paragraphs (6) to (9) apply where a person (“A”) is required or authorised to serve or send a notice or other document for the purposes of this Order on or to another person (“B”).

(6) A may serve or sending the notice or other document by electronic transmission if—

⁽¹⁹⁾ 1978 c. 30. There are amendments to this Act which are not relevant to this Order.

- (a) B has sent A notice that B agrees to receive that notice or document (or notices and documents of a description including that notice or document) by electronic transmission;
- (b) B has not subsequently withdrawn that agreement in accordance with paragraph (8); and
- (c) A complies with any conditions as to addressing or mode of transmission that B has specified in agreeing to receive notices or other documents by electronic transmission.

(7) If B notifies A within 7 days of receiving a notice or other document by electronic transmission that B requires a paper copy of all or any part of the notice or other document, A must provide B with such a copy as soon as reasonably practicable.

(8) B may withdraw agreement to receive a notice or document (or notices or documents of a specified description) by electronic transmission by sending a notice to that effect to A.

(9) Notice under paragraph (8) is final and takes effect on a date specified by B in the notice but that date must not be less than 7 days after the date on which the notice is given.

(10) This article does not exclude the employment of any method of service not expressly provided for by it.

(11) In this article “electronic transmission” means a communication transmitted—

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

Arbitration

45. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institute of Civil Engineers.

Procedure in relation to certain approvals etc.

46.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order such consent, agreement or approval shall, if given, be given in writing and shall not be unreasonably withheld.

(2) Schedule 14 shall have effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements.

For the protection of the Environment Agency (Part 1)

47.—(1) Section 23(6) of the Land Drainage Act 1991(**20**) (prohibition on obstructions etc. in watercourses) shall not apply to the construction of the authorised project.

(2) Any requirement for consent under the terms of the Water Resources Act 1991, the Land Drainage Act 1991 or the Wessex Water Authority Land Drainage Byelaws, shall not be removed by the authorisation of the authorised project by this Order.

(3) Schedule 15 shall have effect.

(20) 1991 c. 59. This Act has been amended by section 1 of the Land Drainage Act 1994 (c. 25) (repealing sections 12 and 13 and inserting of section 67A); by section 120 of, and paragraphs 191 to 194 of Schedule 22 to, the Environment Act 1995 (c. 25); and by section 31 of, and Schedule 2 to, the Flood and Water Management Act 2010 (c. 29).

Crown rights

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

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
 - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the Government Department having the management of that land; or
 - (iii) belonging to a Government Department or held in trust for Her Majesty for the purposes of a Government Department without the consent in writing of that Government Department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority.

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