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STATUTORY INSTRUMENTS

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**2018 No. 693**

**TRANSPORT AND WORKS, ENGLAND**  
**TRANSPORT, ENGLAND**

**The High Speed Rail (London – West Midlands)  
(Greatmoor Railway Sidings Etc.) Order 2018**

*Made* - - - - *7th June 2018*  
*Coming into force* - - *28th June 2018*

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006<sup>(1)</sup> for an Order under sections 1 and 5 of the Transport and Works Act 1992<sup>(2)</sup> (“the 1992 Act”).

The Secretary of State caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn, and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 19th April 2018.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 15 to 17 of Schedule 1 to, the 1992 Act and section 53 of the High Speed Rail (London – West Midlands) Act 2017<sup>(3)</sup> makes the following Order—

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(1) S.I. 2006/1466, amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755, S.I. 2014/469, S.I. 2015/377, S.I. 2015/627, S.I. 2015/1682 and S.I. 2017/979.  
(2) 1992 c. 42. Section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1659.  
(3) 2017 c. 7.

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the High Speed Rail (London – West Midlands) (Greatmoor Railway Sidings Etc.) Order 2018 and comes into force on 28th June 2018.

#### 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 1990 Act” means the Town and Country Planning Act 1990(7);

“the 1991 Act” means the New Roads and Street Works Act 1991(8);

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

“authorised works” means the scheduled works and any other works authorised by this Order;

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

“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;

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

“the deposited plans” means the plans entitled “Works and Land and Public Rights of Way Plan” certified by the Secretary of State as the deposited plans for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

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

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

“the limits of deviation” means the limits of deviation for the scheduled works shown on the deposited plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” is to be construed accordingly;

“the Nominated Undertaker” has the same meaning as in section 68(1) of the principal Act;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(9);

“Phase One purposes” has the same meaning as in section 67 of the principal Act;

“the principal Act” means the High Speed Rail (London – West Midlands) Act 2017;

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(4) 1961 c. 33.

(5) 1965 c. 56.

(6) 1980 c. 66.

(7) 1990 c. 8.

(8) 1991 c. 22.

(9) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 of the Planning and Compensation Act 1991(c. 34). There are other amendments to section 7 which are not relevant to this Order.

“the scheduled works” means the works specified in Schedule 1 (scheduled works) to this Order or any part of them;

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

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

“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.

(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, lengths and points stated in the description of the scheduled works or in any description of powers or lands are approximate, and distances between points on a scheduled work are taken to be measured along the scheduled work.

## PART 2

### WORKS PROVISIONS

#### *Principal powers*

#### **Power to construct and maintain works**

3.—(1) The Nominated Undertaker may construct and maintain the scheduled works.

(2) Subject to article 4 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (5), the Nominated Undertaker may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) works for the strengthening, alteration or demolition of any building or structure;
- (b) works to alter, or alter the position of apparatus, including mains, sewers, drains and cables;
- (c) works to erect and construct such offices and other buildings, yards, slab, cranes, grabs, weighbridges, plant and machinery, apparatus, and other works and conveniences;
- (d) make, provide and maintain all such bridges, approaches, lifts, roadways, walkways, ramps, retaining structures, means of access, shafts and stages;
- (e) railway lines, electrification and signalling works and telecommunications works;
- (f) works to alter the course of, or otherwise interfere with watercourses;
- (g) landscaping, environmental and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (h) works for the benefit or protection of land or premises affected by the scheduled works.

(4) Subject to paragraph (5), the Nominated Undertaker may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, other than works that would interfere with a navigable watercourse.

- (5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works—
- (a) within the limits of deviation; or
  - (b) on land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) for the purposes specified in column (3) of that Schedule in relation to that land.

#### **Power to deviate**

4. In constructing or maintaining any of the scheduled works, the Nominated Undertaker may—
- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work; and
  - (b) deviate vertically from the levels shown on the sections—
    - (i) to any extent not exceeding 3 metres upwards; or
    - (ii) to any extent downwards as may be found to be necessary or convenient.

#### *Streets*

#### **Stopping up of streets and use of private roads for construction**

5.—(1) Subject to the provisions of this article, the Nominated Undertaker may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 3 (streets to be stopped up) to the extent specified in column (3) of those parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 3 (being a street to be stopped up for which a substitute is to be provided) is to 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 is first provided and afterwards maintained by the Nominated 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) No street specified in columns (1) and (2) of Part 2 of Schedule 3 (being a street to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition 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 condition referred to in paragraph (3) is that—
- (a) the Nominated 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 so stopped up are extinguished; and

(b) the Nominated Undertaker may appropriate and use for the purposes of its railway undertaking so much of the street so stopped up.

(6) The Nominated Undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of or in connection with the construction of the authorised works.

(7) Any person who suffers loss under this article by either the suspension or extinguishment of any private right of way or the exercise by the Nominated Undertaker of the powers conferred by paragraph (6), entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Temporary stopping up and diversion of streets**

6.—(1) The Nominated Undertaker, during and for the purposes of the construction of the authorised works, 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 Nominated Undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) Without limitation on the scope of paragraph (1), the Nominated Undertaker may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(4) The Nominated Undertaker must not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) in relation to 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.

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

## **PART 3**

### **ACQUISITION OF LAND**

#### *Powers of acquisition*

#### **Power to acquire land**

7.—(1) The Secretary of State may acquire compulsorily—

- (a) so much of the land shown on the deposited plans which is within the limits of deviation as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) (being land shown on the deposited plans and described in the book of reference) as may be required for the purposes specified in relation to that land in column (3) of that Schedule,

(c) and may use any land so acquired for those purposes or for any other purposes ancillary to Phase One purposes.

(2) No interest in Crown land may be acquired and no authorised works may be carried out on Crown land pursuant to this Order unless the appropriate Crown authority consents to the acquisition of that Crown land to enable the authorised works.

(3) This article is subject to article 10 (power to acquire new rights).

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

**8.**—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

(a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981<sup>(10)</sup> applies; and

(b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has effect with the following modifications.

(3) Omit section 4 (which provides a time limit for compulsory purchase of land).

(4) In section 4A(1)(c)<sup>(11)</sup> (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4”, substitute “section 22 (validity of orders under section 1 or 3) of the Transport and Works Act 1992, the five year period mentioned in article 15 (time limit for exercise of powers of acquisition) of the High Speed Rail (London – West Midlands) (Greatmoor Railway Sidings Etc.) Order 2018<sup>(12)</sup>”.

(5) In section 11(1B)<sup>(13)</sup> (power to enter on and take possession of land the subject of a notice to treat after giving the specified notice), in a case where the notice to treat relates only to the acquisition of an easement or other right over land, for “3 months” substitute “1 month”.

(6) In section 11A<sup>(14)</sup> (powers of entry: further notices of entry)—

(a) in subsection (1)(a), after “land” insert “under that provision”;

(b) in subsection (2), after “land” insert “under that provision”.

(7) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 15 (time limit for exercise of powers of acquisition) of the High Speed Rail (London – West Midlands) (Greatmoor Railway Sidings Etc.) Order 2018”.

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

**9.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981<sup>(15)</sup> applies as if this Order were a compulsory purchase order.

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

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

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<sup>(10)</sup> 1981 c. 67.

<sup>(11)</sup> As inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

<sup>(12)</sup> S.I. 2018/693.

<sup>(13)</sup> Subsection (1B) of section 11 was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.

<sup>(14)</sup> As inserted by section 186(3) of the Housing and Planning Act 2016.

<sup>(15)</sup> 1981 c. 66.

(4) Omit section 5A(16) (time limit for general vesting declaration).

(5) In section 5B(17) (extension of time limit during challenge), for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 15 (time limit for exercise of powers of acquisition) of the High Speed Rail (London – West Midlands) (Greatmoor Railway Sidings Etc.) Order 2018”.

(6) In section 6(18) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of the Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 14A of the Transport and Works Act 1992”.

(7) In section 7(19) (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land under article 7 (power to acquire land).

### **Power to acquire new rights**

**10.**—(1) The Secretary of State may acquire compulsorily such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 7 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) The terms of an easement created under paragraph (1) may include terms imposing a restrictive covenant for the purpose of making the easement effective.

(3) In the case of the land specified in columns (1) and (2) of Schedule 5 (land in which only new rights may be acquired) the Secretary of State’s powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (3) of that Schedule.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants)) where the Secretary of State acquires a right over land under paragraph (1) or (2) the Secretary of State is not required to acquire a greater interest in that land.

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

### *Compensation*

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

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

(a) any interest in land; or

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(16) As inserted by section 182(2) of the Housing and Planning Act 2016.

(17) As inserted by section 202(2) of the Housing and Planning Act 2016.

(18) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.

(19) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.

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

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

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

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

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

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 10 (power to acquire new rights), the tribunal must set off against the value of the rights so acquired—

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

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

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

### *Supplementary*

### **Acquisition of part of certain properties**

**13.**—(1) This article applies instead of section 8(1) **(20)** (other provisions as to divided land) of the 1965 Act (as applied by article 8 (application of Part 1 of the 1965 Act) in any case 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 part only of a house, building or manufactory or part only 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 Secretary of State 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 must 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 must sell only the land subject to the notice to treat is, unless the Secretary of State agrees to take the land subject to the counter-notice, to be referred to the tribunal.



(5) If on such a reference the tribunal determine 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 forms part of the land consisting 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 must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine 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 forms part of land consisting 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 is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine 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 is 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 Secretary of State is authorised to acquire compulsorily under this Order.

(8) If the Secretary of State agrees to take the land subject to the counter-notice, or if the tribunal determine 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 is 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 Secretary of State is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue 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 Secretary of State may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so must 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 part only of a house, building or manufactory or part only of land consisting of a house with a park or garden, the Secretary of State must pay the owner compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

### **Extinction of private rights of way**

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

- (a) as from the date of acquisition of the land by the Secretary of State, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Secretary of State under section 11(1)(21) (powers of entry) of the 1965 Act,

whichever is the sooner.

(2) Subject to the provisions of this article, all private rights of way over land owned by the Secretary of State and required for the purposes of this Order are extinguished on the appropriation of the land for any of those purposes by the Secretary of State.

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

(4) Subject to section 13 of the principal Act, this article does not apply in relation to any right of way to which section 271 or 272(22) of the 1990 Act (extinguishment of rights of statutory undertakers etc.) applies.

(5) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the Secretary of State before—
  - (i) the completion of the acquisition of the land;
  - (ii) the Secretary of State's appropriation of it; or
  - (iii) the Secretary of State's entry on to it,

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

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

(6) If any agreement 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 is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

### **Time limit for exercise of powers of acquisition**

**15.** After the end of the period of 5 years beginning with 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 as applied to the acquisition of land by article 8 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 9 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(23).

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(21) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No 1) and S.I. 2009/1307.

(22) Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(23) 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). 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.50); 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,

## PART 4

### MISCELLANEOUS AND GENERAL

#### **Planning permission**

**16.** Planning permission which is deemed by a direction under section 90(2A)(24) (development with government authorisation) of the 1990 Act to be granted in relation to authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land of the purposes of that Act) of that Act.

#### **Power to transfer undertaking**

**17.—**(1) The Nominated Undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be agreed between the Nominated Undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed for a period agreed between the Nominated Undertaker and the lessee the right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be agreed.

(2) Any agreement made under the powers conferred by paragraph (1) may contain such incidental, consequential or supplementary provisions, including provisions relating to the defraying of, or the making of contributions towards the costs of such construction, maintenance, use and operation by the Nominated Undertaker or by any other person.

(3) Where an agreement has been made by virtue of paragraph (1) references in this Order to the Nominated Undertaker include, where appropriate, references to the transferee or lessee.

(4) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Nominated Undertaker.

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

**18.—**(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised works or the right to operate those works; and
- (b) any agreement entered into by the Nominated Undertaker with any person for the construction, maintenance, use or operation of the authorised works or any part of those works,

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

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

(3) No such enactment or rule of law applies in relation to 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 matter;

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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 amendments to the 1981 Act which are not relevant to this Order. (24) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

- (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 the obligation of any party under the lease.

### **Application of the principal Act to authorised works**

**19.**—(1) Schedule 7 (application of provisions of the principal Act) has effect.

(2) So far as consistent with the provisions of this Order and the 1992 Act<sup>(25)</sup> and so far as any person exercising the powers conferred by this Order is a nominated undertaker for the purposes of any provision of the principal Act, this Order and the principal Act are to be construed as one.

### **Modification of provisions in an agreement relating to the protection of Network Rail Infrastructure Limited**

**20.**—(1) The Nominated Undertaker is bound by the obligations of the Secretary of State for Transport under the relevant agreement as if it had been a party to that agreement.

(2) The modifications specified in paragraph (3) have effect with respect to the relevant agreement.

(3) The modifications referred to in paragraph (2) are—

- (a) references to “High Speed 2 Works” in the relevant agreement include the authorised works; and
- (b) reference in clause 2 of the relevant agreement to the use of powers in the principal Act which would authorise those matters set out in paragraphs (a) to (f) of that clause include reference to the powers conferred by Part 3 of this Order which would authorise such matters.

(4) The Nominated Undertaker is the Alternative Nominated Undertaker for the purposes of clause 17.1 of the relevant agreement and will perform the obligations of the relevant agreement insofar as they relate to the authorised works.

(5) In this article “the relevant agreement” means the agreement dated 28th February 2014 between the Secretary of State for Transport and Network Rail Infrastructure Limited relating to protective provisions in respect of the High Speed 2 Project.

### **Obstruction of construction of authorised works**

**21.** Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the Nominated Undertaker in setting out the lines of the scheduled works or in constructing any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the Nominated Undertaker,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Trespass**

**22.**—(1) Any person who—

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(25) 1992 c. 42.

- (a) trespasses on any part of the railway; or
- (b) trespasses on any land occupied by the Nominated Undertaker in dangerous proximity to the railway or to any electrical or other apparatus used for or in connection with the operation of the railway,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person is to be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass on the railway was clearly exhibited and maintained at the station on the railway nearest the place where the offence is alleged to have been committed.

(3) In this article “the railway” means the railway forming part of the authorised works.

### **Disclosure of confidential information**

**23.** A person who—

- (a) enters a factory, workshop or workplace under the provisions of paragraphs 1, 2, 3, 4, 5 and 6 of Part 2 of Schedule 2 to the principal Act as applied to this Order pursuant to article 19 (application of the principal Act to authorised works); and
- (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of that person’s performance of a duty in connection with the purposes for which the person was authorised to enter the land.

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

**24.** The Nominated Undertaker must, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited plans and the sections to the Secretary of State for certification that they are, respectively, true copies of the book of reference the deposited plans and the sections referred to in this Order; and a 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**

**25.—(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 (8) by electronic transmission.

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(26) 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, that person's last known address 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 where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(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 any 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 transmission 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.

### **Repeals of the principal Act**

**26.**—(1) The following provisions of the principal Act are omitted—

- (a) subsections (5) to (11) of section 22; and
  - (b) Works Nos. 2/76B, 2/76C (and the sub-heading above it) and 2/78 in Schedule 1.
- (2) In Work No. 2/80, for “, 2/79 and 2/78” substitute “and 2/79”.

### **No double recovery**

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

Signed by authority of the Secretary of State

7th June 2018

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

## SCHEDULES

### SCHEDULE 1

Articles 2(1) and 3

#### SCHEDULED WORKS

##### **In the County of Buckinghamshire, District of Aylesbury Vale**

Parishes of Quainton and Grendon Underwood

Work No. 1 – A railway siding (1090 metres in length) to serve the Calvert Landfill and the Greatmoor Energy from Waste Facility in the District of Aylesbury Vale, County of Buckinghamshire commencing by a junction with the Aylesbury Link at a point 330 metres south east of the bridge carrying bridleway QUA/36/2 over the Aylesbury Link and terminating by a junction with the Aylesbury Link at a point 166 metres north west of the bridge carrying bridleway GUN/28/1 over the Aylesbury Link.

Parishes of Grendon Underwood and Calvert Green

Work No. 2 – A railway siding (720 metres in length) for the loading and offloading of spoil and waste material to the Calvert Landfill and the Greatmoor Energy from Waste Facility in the District of Aylesbury Vale, County of Buckinghamshire commencing by a junction with Work No. 1 at a point 44 metres south east of the bridge carrying bridleway GUN/28/1 over the Aylesbury Link and terminating at a point 90 metres north of the junction of footpath CAG/2/1 with Bridleway CAG/3/1.

Work No. 3 - A railway siding (680 metres in length) for the loading and offloading of spoil and waste material to the Calvert Landfill and the Greatmoor Energy from Waste Facility in the District of Aylesbury Vale, County of Buckinghamshire commencing by a junction with Work No. 1 at a point 10 metres east of the bridge carrying bridleway GUN/28/1 over the Aylesbury Link and terminating at a point 66 metres north of the junction of footpath CAG/2/1 with Bridleway CAG/3/1.

Parish of Quainton

Work No. 4 - A bridge over Work No. 1 commencing on bridleway QUA/36/2 at a point 86 metres south-west of the bridge carrying that bridleway over the Aylesbury Link and terminating on bridleway QUA/36/3 at a point 96 metres north-east of that bridge.

Parishes of Quainton and Grendon Underwood

Work No. 5 – An access road commencing at a point 90 metres west of the bridge carrying bridleway QUA/36/2 over the Aylesbury Link and terminating at a point 194 metres south of the bridge carrying bridleway GUN/28/1 over the Aylesbury Link.

Parish of Grendon Underwood

Work No. 6 - A bridge over Work No. 1 commencing at a point 204 metres south of the bridge carrying bridleway GUN/28/1 over the Aylesbury Link and terminating at a point 108 metres north of that bridge.

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SCHEDULE 2

Article 3

ACQUISITION OF CERTAIN LANDS FOR ANCILLARY WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the land plans</i>	<i>(3)</i> <i>Purpose for which land may be acquired</i>
County of Buckinghamshire, District of Aylesbury Vale, Parish of Quainton	6, 15, 16, 33	Provision of environmental mitigation
Parish of Grendon Underwood	1, 2, 14 to 17, 19, 20, 26 to 29, 33	Provision of environmental mitigation
	8, 9	Provision of worksite and access for construction  Provision of new public right of way
	31, 32, 34 to 38	Provision of railway infrastructure and access for construction and maintenance
		Provision of railway infrastructure
	39	Provision of new public right of way
Provision of worksite and access for construction		
Parish of Calvert Green	1 to 3	Provision of new public right of way
	6	Provision of railway infrastructure and access for construction and maintenance  Provision of new public right of way
	7	Provision of environmental mitigation



SCHEDULE 3

Article 5

STREETS TO BE STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<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>
County of Buckinghamshire  District of Aylesbury Vale			
Parish of Quainton	Footpath QUA/35/1	Between points P1 and P2	Footpath between points P1, P3 and P4
	Bridleways QUA/36/2 and QUA/36/3	Between points P5 and P6	Work No.4
Parish of Grendon Underwood	Bridleway GUN/28/1	Between points P19 and P20	Footpath between points P19, P9, P10 and P22
	Footpath GUN/29/1	Between points P9 and P19	Bridleway between points P9, P10 and P22
	Footpath GUN/31/1	Between points P7 and P8	Footpath between points P7, Footpath GUN/29/1 and points P9, P10 and P22
Parish of Calvert Green	Footpath CAG/2/1	Between points P11 and P12	Footpath between points P11, P13, P14, P15, P17, P18, Work No.5 (part) and point P10

PART 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<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>
County of Buckinghamshire		

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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>
District of Aylesbury Vale		
Parish of Grendon Underwood	Bridleway GUN/25/1	Between points P8 and P16
	Bridleway GUN/25/2	Between points P8 and P21
Parish of Calvert Green	Bridleway CAG/3/1	Between points P23 and P16

## SCHEDULE 4

Article 6

## STREETS TO BE TEMPORARILY STOPPED UP

<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>
County of Buckinghamshire		
District of Aylesbury Vale	Footpath QUA/24A/1	Within Order limits
Parish of Quainton	Footpath QUA/35/1	Within Order limits
	Bridleway QUA/36/2	Within Order limits
	Bridleway QUA/36/3	Within Order limits
	Bridleway QUA/37/1	Within Order limits
Parish of Grendon Underwood	Bridleway GUN/28/1	Within Order limits
	Footpath GUN/29/1 Bridleway	Within Order limits
	GUN/30/1 Bridleway	Within Order limits
	GUN/31/1 Bridleway GUN/31/2	Between points P7 and P8 Within Order limits
	Bridleway GUN/34/1	Within Order limits
	Bridleway GUN/35/1	Within Order limits
Parish of Calvert Green	Footpath CAG/2/1	Within Order limits
Parish of Woodham	Footpath WOD/1/4	Within Order limits
Parishes of Calvert Green and Woodham	Un-named private road between the A41 Bicester Road and Bridleway QUA/36/2	Within Order limits

SCHEDULE 5

Article 10

LAND IN WHICH ONLY NEW RIGHTS MAY BE ACQUIRED

(1) Area	(2) Number of land shown on the land plans	(3) Purpose for which rights may be acquired
County of Buckinghamshire,		
District of Aylesbury Vale, Parish of Quainton	34 to 42	Provision of access for maintenance and installation of utility apparatus.
Parish of Woodham	1 to 8	Provision of access for maintenance and installation of utility apparatus.

SCHEDULE 6

Article 10

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

*Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right and in the case of the imposition of a restrictive covenant, 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 1961 Act has effect subject to the modifications set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enter on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to the High Speed Rail (London – West Midlands) (Greatmoor Railway Sidings Etc.) Order 2018 (“the 2018 Order”);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the 2018 Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on land and takes possession of that land, the authority is deemed for the purposes of subsection 3(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

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3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973<sup>(27)</sup> has effect subject to the modifications set out in sub-paragraph (2).

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

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

*Application of Part 1 of the 1965 Act*

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by article 8 (application of Part 1 of the 1965 Act) to the acquisition of land under article 7 (power to acquire land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant, under article 10(1), (2) or (3) (power to acquire new rights)—

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

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

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

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

(3) For section 7 (measure of compensation in the case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or imposition of the restrictive covenant, but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with an interest in land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified 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 acquiring authority.

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<sup>(27)</sup> 1973 c. 26.

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(5) Section 11(28) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 8(1)), it has power, exercisable in the equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right or enforcing that restriction; and sections 11A(29) (powers of entry: further notices of entry) and 11B(30) (counter-notice requiring possession to be taken on specified date), 12(31) (penalty for unauthorised entry) and 13(32) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(33) (protection for interests of tenants at will etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or is likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act (as modified by article 8(7)) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or to enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

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

#### “SCHEDULE 2A

#### COUNTER-NOTICE REQUIRING PURCHASE OF LAND

##### *Introduction*

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting the whole or part of a house, building or factory.
2. In this Schedule “house” includes any park or garden belonging to a house.

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

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.
4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

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

5. On receiving a counter-notice, the authority must decide whether to—
  - (a) withdraw the notice to treat,

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

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

(30) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.

(31) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning Act 2016.

(32) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals Courts and Enforcement Act 2007 (c. 15).

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

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- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

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

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

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

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

#### *Determination by Upper Tribunal*

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

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

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

## SCHEDULE 7

Article 19

### APPLICATION OF PROVISIONS OF THE PRINCIPAL ACT

1. The following provisions of the principal Act apply to the matters which are the subject of this Order on the general assumptions mentioned in paragraph 2—

- (a) section 13 (extinction of rights of statutory undertakers), section 18 (enforcement of restrictions on land use), subsection (2) of section 22 (power to disapply deemed planning permission), section 28 (consecrated land), section 29 (commons and open spaces), section 30 (trees), section 43 (co-operation), section 44 (transfer of functions relating to works), section 51 (enforcement of environmental covenants) and section 64 (arbitration);
- (b) paragraphs 1 (authority to survey and investigate land etc), 2 to 6 (support of buildings), 7 (trees on neighbouring land), 8 (discharge of water) and 10 (electronic communications apparatus) of Part 1 (further and supplementary provisions) and paragraphs 12 to 14 of Part 2 (exercise of powers of entry etc) of Schedule 2 (works);
- (c) paragraphs 10, 12, 14, 16 and 17 of Part 3 (construction and maintenance of highways) of Schedule 4 (Highways);
- (d) paragraph 4 (Acquisition of Land Act 1981) of Schedule 6 (Acquisition of Land: application of compulsory purchase legislation);
- (e) paragraphs 1, 2 and 3 (water abstraction and impounding), 5 (floods), 6 (drainage) and 9 (interpretation) of Schedule 21 (water);
- (f) paragraphs 1 (building regulations), 2 (drain repairs), 3 (drain disconnections) and 6 (interpretation) of Schedule 22 (buildings);
- (g) paragraph 3 (permit schemes) of Schedule 24 (street works);
- (h) paragraphs 1 (control of noise on construction sites), 2 and 3 (defences to proceedings relating to statutory nuisance) and 4 (disapplication of sections 61(9) and 65(8) of Control of Pollution Act 1974) of Schedule 27 (noise);
- (i) paragraphs 1 (Highway (Railway Crossings) Act 1839 (c. 45)), 4 (Railways Clauses Consolidation Act 1845 (c. 20)), 5 (Railways Clauses Act 1863 (c. 92)) and 7 (British Transport Commission Act 1949 (c. xxix)) of Schedule 29 (application of other railway legislation etc);
- (j) Schedule 30 (arbitration between railway operators); and
- (k) Parts 2 (electricity, gas, water and sewerage undertakers), 3 (electronic communications code networks) and 5 (land drainage, flood defence, water resources and fisheries) of Schedule 33 (protective provisions).

#### *The general assumptions*

2. The general assumptions are that references in the principal Act in whatever form (including references inserted or substituted by any provision of that Act in any other enactment)—

- (a) to that Act were references to this Order;
- (b) to Phase One purposes were references to the authorised works;

#### *Ancillary matters*

3.—(1) Regulations made under paragraph 1(2) (control of noise on construction sites) of Schedule 27 to the principal Act have effect in relation to appeals referred to arbitration under subsection (7A) of section 60 or 61 of the Control of Pollution Act 1974(a), as inserted by paragraph

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1(1) of Schedule 27 to the principal Act and applied by paragraph 1(h), as they have effect for appeals referred to arbitration under that subsection in relation to works carried out in exercise of the powers conferred by Part 1 of the principal Act.

(2) Rules made under section 64(5) (arbitration) of the principal Act apply to an arbitration under this Order as they apply to an arbitration under Part 1 of the principal Act.

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## EXPLANATORY NOTE

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

This Order authorises High Speed Two (HS2) Limited to construct railway sidings and associated works adjacent to the Aylesbury Link Railway (also known as the Marylebone to Claydon Junction Line) for the loading and offloading of spoil and waste material to the Calvert Landfill and the Greatmoor Energy from Waste Facility in the District of Aylesbury Vale, County of Buckinghamshire. The works are required in connection with Phase One of the proposed High Speed Railway between London and Birmingham and will replace existing railway sidings and facilities for the transfer of waste located near the village of Calvert also in the District of Aylesbury Vale and currently operated by FCC Waste Services (UK) Limited.

In addition to the new railway sidings (Works Nos. 1 to 3) the works include two bridges over the railway sidings (Works Nos. 4 and 6) and an access road (Work No.5).

The Order also authorises the compulsory acquisition and temporary use of land for the purposes of the works and confers powers in connection with the construction and operation of the works.

A copy of the deposited plans, sections and the book of reference mentioned in the Order and certified in accordance with article 24 of this Order may be inspected free of charge during normal working hours at the offices of High Speed 2 Limited at 5<sup>th</sup> Floor, Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT.