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STATUTORY INSTRUMENTS

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201X No.[XXXX]

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Rother Valley Railway (Bodiam to Robertsbridge Junction)  
Order

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

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**Commented [JEW1]:** Formatting error in application draft.

**Commented [JEW2]:** Included by agreement with Department for Transport in relation to acquisition of historic railway bridges located along Railway No. 2. (see RVR/W1/2-05).

**Commented [JEW3]:** Standard clause included as land to be compulsorily acquired includes a Crown interest (that is, the Secretary of State for Transport's interest in the historic railway bridges.)

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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>(a)</sup> for an Order under sections 1 and 5 of the Transport and Works Act 1992<sup>(b)</sup> (“the 1992 Act”).

~~Objections to that application have been withdrawn.~~

†The Secretary of State has 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[The Secretary of State, having considered [the objections made and not withdrawn][and][the report of the person who held the inquiry], has determined to make an Order giving effect to the [proposals comprised in the application [without modifications]][with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals]][proposals concerned with modifications which in the opinion of the Secretary of State make a substantial change in the proposals].

[The Secretary of State having considered representations duly made under section 13 of the 1992 Act, has determined to make the Order applied for with modifications.]

Notice of the Secretary of State’s determination was published in the London Gazette on [ ].

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10 to 13 and 15 to 17 of Schedule 1 to, the 1992 Act makes the following Order:—

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X] and comes into force on [ ] 201[X].

#### Interpretation

2.—(1) In this Order—

“the 1845 Act” means the Railways Clauses Consolidation Act 1845(c);

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

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

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

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(g )

(a) S.I. 2006/1466 as 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, ~~and S.I. 2013/755, [S.I. 2014/469](#), [S.I. 2015/627](#), [S.I. 2017/979](#) and [S.I. 2017/1070](#).~~

(b) 1992 c. 42. Section 1 was amended by paragraphs 51 and 52 of Schedule 2 to the Planning Act 2008 (c. 29). Section 5 was amended by S.I. 2012/1659.

(c) 1845 c. 20.

(d) 1961 c. 33.

(e) 1965 c. 56.

(f) 1980 c. 66.

(g) 1981 c. 66

“the 1984 Act” means the Road Traffic Regulation Act 1984(a)

“the 1990 Act” means the Town and Country Planning Act 1990(b);

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

“the 2003 Act” means the Communications Act 2003 (d)

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

“authorised works” means the new railway and any other works authorised by this Order, or any part of them;

“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;

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

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

“the Company” means Rother Valley Railway Limited (Company number 02613553) whose registered office is at 3-4 Bower Terrace, Tonbridge Road, Maidstone, Kent, ME16 8RY of Robertsbridge Junction Station, Station Road, Robertsbridge, East Sussex, TN32 5DG;

“electronic transmission” means a communication transmitted—

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

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

“the existing railways” means the railways specified in Part 2 of Schedule 1 (the ~~R~~ railway) together with all lands and works relating to the existing railways vested in the Company at the date this Order is made and held or used by the Company for the purposes of its railway undertaking;

“footpath” and “footway” have the same meanings as in the 1980 Act;

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

“KESR” means the Kent and East Sussex Railway Company Limited, a charitable company limited by guarantee (Registered charity no. 262481) of Tenterden Town Station, Station Road, Tenterden, Kent, TN30 6HE;

“limits of ~~additional land~~ to be acquired or used” means the limits of ~~additional~~ land to be acquired or used shown on the Order plans;

“limits of deviation” means the limits of deviation ~~for the Railway~~ shown on the Order plans;

“limits of land for survey and investigation” means the limits of land of which entry may be taken for survey and investigation shown on the Order plans;

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

“the new railway” means the railway specified in Part 1 of Schedule 1 together with all lands and works relating to that railway;

“Order land” means the land shown on the Order plans which is within the Order limits ~~and~~ described in the book of reference;

“Order limits” means the limits of deviation and the limits of ~~additional~~ land to be acquired or used ~~as~~ shown on the Order plans;

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

**Commented [JEW4]:** Referred to in the Protection for Operators of Electronic Communications Code Networks in Schedule 8

**Commented [JEW5]:** Current registered office as per Companies House.

**Commented [JEW6]:** Deleted for consistency with term used on the Order plans and recent precedent.

**Commented [JEW7]:** Added for clarity – as it refers to both the new and existing railways.

(a) 1984 c. 27.

(b) 1990 c. 8.

(c) 1991 c. 22. As amended by the Traffic Management Act 2004 c. 18.

(d) 2003 c. 21

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

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

“the railway” means the new railway and the existing railways;

**“road hump” has the same meaning as in the 1980 Act(b);**

“statutory undertaker” means—

- (a) any person who is a statutory undertaker for any of the purposes of the 1990 Act; and
- (b) any public communications provider within the meaning of section 151(1) of the ~~Communications 2003 Act 2003~~ (c);

“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; and

“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) References in this Order to numbered plots are references to plot numbers on the Order plans.

(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on an authorised work are taken to be measured along that work.

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

#### Application of other railway legislation, etc.

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

section 58(d) (company to repair roads used by them), except for the words from “and if any question” to the end;

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 75 (omission to fasten gates);

section 77 (presumption that minerals excepted from acquisition of land);

sections 78 to 83, 85 to 85E(e) and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(f);

**Commented [JEW8]:** This is a term used in article 9 (power to alter layout etc. of streets). Its inclusion in article 2 is for consistency with recent precedent (Network Rail (East West Rail)(Bicester to Bedford Improvements) Order 2020 (S.I. 2020/114) (East West Rail)

(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(b) The definition of “road hump” was inserted by section 32 of, and paragraph 1 of Schedule 6 to, the Transport Act 1981 (c. 56).

(c) 2003 c. 21.

(d) There are amendments to section 58 that are not relevant to this Order.

(e) Section 79A was amended by section 48(1)(c) of the Coal Industry Nationalisation Act 1946 (c. 59). Section 85C was amended by virtue of section 17(2)(a) of the Interpretation Act 1978 (c. 30).

(f) 1923 c. 20. Section 79A was amended by section 48(1)(e) of the Coal Industry Nationalisation Act 1946 (c. 59). Section

section 103(a) (refusal to quit carriage at destination);  
 section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”; and  
 section 145(b) (recovery of penalties).

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

“the company” means the Company;

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

“lease” includes an agreement for a lease;

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

“the railway” means ~~any~~ the new railway authorised to be constructed by this Order, the existing railways and any other authorised work;

“the special Act” means this Order; and

“toll” includes any rate or charge or other payment payable under this enactment or any other enactment for any passenger or goods conveyed on any railway authorised to be constructed by this Order.

**Commented [JEW9]:** Deletion for clarity – is intended to refer to the entirety of the railway authorised by the Order, as defined below.

#### Application of the 1991 Act

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

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

**Commented [JEW10]:** Amendment for consistency with recent precedent (East West Rail).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out street works) and any regulations made or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by the Company under the powers conferred by article 12 (temporary stopping up of streets) and the carrying out of works under article 10 (power to execute street works) whether or not the stopping up, alteration or diversion, or the carrying out of such works, constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act(~~d~~) referred to in paragraph (2) are—

section 54(e) (advance notice of certain works), subject to paragraph (4);

section 55(f) (notice of starting date of works), subject to paragraph (4);

section 59(g) (general duty of street authority to co-ordinate works);

~~85C was amended by virtue of section 17(2)(a) of the Interpretation Act 1978 (c. 30);~~

- (a) ~~Section 103 was~~As amended by the Statute Law Revision Act 1892 (c. 19), Part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1892 (c. 48).
- (b) ~~Section 145 was~~As amended by the Statute Law Revision Act 1892 (c. 19) and Part 2 of Schedule 12 to the Transport Act 1962 (c. 46).
- (c) ~~Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c.51) and section 168(2) of, and Schedule 9 to, the New Road and Street Works Act 1991 (c. 22).~~
- (d) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
- (e) As also amended by section 49(1) of the Traffic Management Act 2004.
- (f) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
- (g) As amended by section 42 of the Traffic Management Act 2004 (c.18)

- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

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

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (2) have effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

### Disapplication of legislative provisions

5.—(1) The following provisions do not apply in relation to any works executed under the powers conferred by this Order—

- (a) ~~Regulation 12(1)(a) (requirement for environmental permit required for operating a regulated facility) of the Environmental Permitting (England and Wales) Regulations 2016(a) in relation to the carrying out of a relevant flood risk activity within the meaning of paragraph 3(1)(a), (b) or (c) of Schedule 25 to those Regulations (erection, alteration or repair of structures in, over or under a main river);~~
- (b) section 23 (prohibition on obstacles etc. in watercourses) of the Land Drainage Act 1991(b); and
- (c) the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of the Land Drainage Act 1991, which require consent or approval for the carrying out of the works.

(2) (In this article, “flood risk activity” means an activity described in paragraph 3(1)(a), (b) or (c) of Schedule 25 (flood risk activities and excluded flood risk activities) to the Environmental Permitting (England and Wales) Regulations 2016.

**Commented [JEW11]:** Amended for consistency with recent TWAO precedent.

## PART 2

### WORKS PROVISIONS

#### ~~Principal powers~~ **PRINCIPAL POWERS**

#### Power to construct new railway

6.—(1) The Company may construct and maintain the new railway.

(2) Subject to article 8 (power to deviate) the new railway may only be constructed in the lines or situations shown on the Order plans and in accordance with the levels shown on the Order sections.

(3) Subject to paragraph (5), the Company 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 new railway, namely—

- (a) electrical equipment and signalling works;
- (b) ramps, means of access, a passing loop, and a halt at Salehurst;
- (c) embankments, viaducts, aprons, abutments, retaining walls, wing walls, bridges, drainage and culverts;

(a) S.I. 2016/1154  
(b) 1991 c. 59



- (d) works to install or alter the position of apparatus, including mains, sewers, drains and cables;
- (e) temporary works in the river Rother in connection with the construction of the new railway;
- (f) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (g) extension and strengthening of the wall to the north of the river Rother at Robertsbridge between points X and Y on the Order plans.

(4) Subject to paragraph (5), the Company may carry out and maintain 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 new railway, other than works that would interfere with a navigable watercourse.

(5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on—

- (a) land specified in columns (1) and (2) of Schedule 2 (acquisition of land for ancillary works) for the purpose specified in column (3) of that Schedule; or
- (b) land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule.

(6) The Company may, within the Order limits—

- (a) carry out and maintain landscaping, ecological and other works to mitigate any adverse effects of the construction, maintenance and operation of the authorised works (other than works authorised by this paragraph); and
- (b) carry out and maintain works for the benefit or protection of land affected by the authorised works (other than works authorised by this paragraph).

#### **Power to maintain existing railways**

7. With effect from the date of this Order, the Company may maintain the existing railways in the lines and situations, and within the limits of deviation, shown on the Order plans, and in accordance with the levels shown on the Order sections.

#### **Power to deviate**

8. In constructing or maintaining the railway, the Company may—

- (a) deviate laterally from the lines or situations shown on the Order plans to the extent of the limits of deviation for that ~~work~~ railway; and
- (b) deviate vertically from the levels shown on the Order sections—
  - (i) to any extent not exceeding 1.5 metres upwards; or
  - (ii) to any extent downwards as may be found to be necessary or convenient.

*Streets*

#### **Power to alter layout etc. of streets**

9.—(1) Subject to paragraph (2), the Company may, for the purposes of constructing and maintaining any authorised work, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, the Company may—

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

Commented [JEW12]: Typo

(d) temporarily remove any road hump within the street.

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

(3) The powers conferred by paragraph (1) ~~are not to~~**must not** be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

**Commented [JEW13]:** Amended to reflect recent TWAO precedent.

(4) If within 28 days of receiving an application for consent under paragraph (3) a street authority fails to notify the Company of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

#### Power to execute street works

**10.**—(1) The Company may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) This article is subject to paragraph (3) of Schedule ~~8-6~~ (provisions relating to statutory undertakers, etc.).

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

#### Stopping up of street

**11.**—(1) Subject to the provisions of this article the Company may, in connection with the carrying out of the authorised works, stop up Footpath S&R 31 between points P1 and P2 on sheet 3 of the Order plans.

(2) The street referred to in paragraph (1) is not to be wholly or partly stopped up under this article unless—

- (a) a new street has been constructed and substituted for it between points P1, P4 and P2 on sheet 3 of the Order plans to the reasonable satisfaction of the street authority and is open to use; or
- (b) a temporary alternative route for the passage of such persons as could have used the street to be stopped up is first provided and subsequently maintained by the Company, to the reasonable satisfaction of the street authority, between points P1, ~~P3, P2~~ and ~~P52~~ on the Order plans until the completion and opening of the new street in accordance with sub-paragraph (a).

**Commented [JEW14]:** Addition of P5 to take temporary footpath diversion to south of Mill Stream in order to allow for replacement of an existing bridge.

(3) Where Footpath S&R 31 has been stopped up under this article—

- (a) all rights of way over or along it are extinguished; and
- (b) the Company may appropriate and use for the purposes of its railway undertaking so much of the site of the street as is bounded on both sides by land owned by the Company.

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

(5) This article is subject to paragraph 2 of Schedule 6 (provisions relating to statutory undertakers etc.) to this Order.

### Temporary stopping up of streets

**12.**—(1) The Company, during and for the purposes of the execution 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 (3), prevent all persons from passing along the street.

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

(3) Without limitation on the scope of paragraph (1), the Company may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the ~~works~~ Order plans, in column (3) of that Schedule.

(4) The Company 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.

(6) If within 28 days of receiving an application for consent under paragraph (4)(b) a street authority fails to notify the Company of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

### Access to works

**13.**—(1) The Company may, for the purposes of, or in consequence of, the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the locations marked A1 and A2 on sheet 3 of the ~~deposited-Order~~ Order plans; and
- (b) with the approval of 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 Company reasonably requires for the purposes of the authorised works.

(2) If a highway authority fails to notify the Company of its decision within 28 days of receiving an application for approval under paragraph (1), that highway authority will be deemed to have granted approval.

### Agreements with street authorities

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

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (c) the execution in the street of any of the works referred to in article 10 (power to execute street works).

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

## Level crossings

**15.—**(1) The Company may construct the new railway so as to carry it on the level across the highways specified in Part 1 of Schedule 5 (level crossings).

(2) The Company may provide, maintain and operate at or near the level crossings referred to in paragraph (1) above such barriers or other protective equipment as the Secretary of State may approve in writing or as may be required through an Order under the Level Crossings Act 1983<sup>(a)</sup>.

(3) The Company may in the exercise of the powers conferred by this article alter the level of any highway specified in Schedule 5.

(4) The highway authority and the Company may enter into agreements with respect to the construction and maintenance of any level crossing; and such agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(5) Any traffic sign placed pursuant to this article on or near a highway or other road to which the public has access will be treated for the purposes of section 64(4) of the 1984 Act as having been placed as provided by that Act.

(6) The following enactments will not apply to any level crossing authorised by this Order —

- (a) the Highway (Railway Crossings) Act 1839<sup>(b)</sup>; and
- (b) section 9 of the Railway Regulation Act 1842<sup>(c)</sup>.

(7) In this article—

“barrier” includes gate;

“level crossing” means the place at which the railway crosses a highway on the level under the powers conferred by this article; and

“protective equipment” includes lights, traffic signs (within section 64(1) of the 1984 Act), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

### *Supplemental powers*

## Discharge of water

**16.—**(1) The Company may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works 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 Company under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991<sup>(d)</sup>.

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

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

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

(5) The Company must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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(a) 1983 c.16

(b) 1839 c. 45.

(c) 1842 c. 55

(d) 1991 c. 56. [Section 106 was amended by sections 35\(1\) and \(8\) and 43\(2\) of, and Schedule 2 to, the Competition and Service \(Utilities\) Act 1992 \(c.43\), sections 36\(2\) and 99 of the Water Act 2003 \(c.37\) and paragraph 16\(1\) of Schedule 3 to the Flood and Water Management Act 2010 \(c.29\).](#)

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

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

(8) If a person who receives an application for consent or approval fails to notify the Company of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(9) In this article—

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

#### **Power to survey and investigate land**

**17.—**(1) The Company may for the purpose of this Order—

- (a) survey or investigate any land shown within the Order limits and limits of land for survey and investigation;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the Company thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
- (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; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days’ notice has been served on every owner and occupier of the land.

(3) Notice given in accordance with paragraph (2) must include—

- (a) a statement of the recipient’s rights under paragraph (15); and
- (b) a copy of any warrant issued under paragraph (8).

(4) If the Company proposes to do any of the following, the notice must include details of what is proposed—

- (a) searching, boring or excavating;
- (b) leaving apparatus on the land;
- (c) taking samples;
- (d) an aerial survey;
- (e) carrying out any other activities that may be required to facilitate compliance with the instruments mentioned in paragraph (5).

(5) The instruments mentioned in paragraph (4)(e) are—

**Commented [JEW15]:** The new paragraphs are not in the model clauses but are adapted from the provisions recently enacted in, and now in force under, the Housing and Planning Act 2016 (c. 67) under sections 173 to 177 to allow for use of a warrant to enforce the powers in this article. This brings the surveying arrangements in relation to works authorised by Transport and Works Act Order in line with recent changes in the general law and is consistent with recent TWAO precedent.

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

(a) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of effects of certain public and private projects on the environment(a); or

(b) Council Directive 92/42/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora(b).

(6) If the Company obtains a warrant after giving notice in accordance with paragraph (2) it must give a copy of the warrant to all those to whom it gave that notice.

~~(3)~~(7) Any person entering land under this article on behalf of the Company —

(a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph ~~(48)~~; ~~and~~

(b) may not use force unless a justice of the peace has issued a warrant under paragraph ~~(48)~~ authorising the person to do so;

~~(c)~~ may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes;

~~(d)~~ may only enter and survey at a reasonable time; and

~~(e)~~(e) must, if the land is unoccupied or the occupier is absent from the land when the person enters it, leave it as secure against trespassers as when the person entered it.

~~(4)~~(8) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

(a) that another person has prevented or is likely to prevent the exercise of that power, and

(b) that it is reasonable to use force in the exercise of that power.

~~(5)~~(9) The force that may be authorised by a warrant is limited to that which is reasonably necessary.

~~(6)~~(10) A warrant authorising the person to use force must specify the number of occasions on which the Company can rely on the warrant when entering and surveying or valuing land.

~~(7)~~(11) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

~~(8)~~(12) Any evidence in proceedings for a warrant under this article must be given on oath.

~~(9)~~(13) No trial holes are to be made under this article—

(a) in a carriageway or footway without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

~~(10)~~(14) The Company must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

~~(11)~~(15) If either a highway authority or a street authority which receives an application for consent fails to notify the Company of its decision within 28 days of receiving the application for consent—

(a) under paragraph ~~(9)~~(13) in the case of a highway authority; or

(b) under paragraph ~~(13)~~(14) in the case of a street authority,

that authority is deemed to have granted consent.

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(a) O.J. No. L26, 28.1.2012, p1.  
(b) O.J. No. L206, 22.7.1992, p.7.

**PART 3**  
**ACQUISITION AND POSSESSION OF LAND**  
*Powers of acquisition*

**Power to acquire land**

**18.**—(1) The Company may acquire compulsorily—

- (a) so much of the land shown on the Order plans as lying within the limits of deviation 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 land for ancillary works) (being land shown on the land plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule

and may use any land so acquired for those purposes, or for any other purposes that are ancillary to its railway undertaking as existing from time to time.

(2) This article is subject to paragraph (8) of article 22 (temporary use of land for construction of works).

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

**19.**—(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(a) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act as so applied 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)(b) (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 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 26 (time limit for exercise of powers of acquisition) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X].”

~~(5)~~ In section 11(1B)(c) (power to enter on and take possession of land the subject of a notice to treat after giving the specified notice)

~~(6)~~(5) 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”.

~~(7)~~(6) In section 11A(d) (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”

~~(8)~~(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 26 of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X](e)”.

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(a) 1981 c. 67.

(b) ~~Subsection (1) of section 11A~~ ~~as was~~ inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(c) ~~Subsection (1B) of section 11~~ ~~was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.~~

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

(e) S.I. 201[X]/XXXX

- ~~(9)~~(8) In Schedule 2A(a) (counter-notice requiring purchase of land not in notice to treat)—
- (a) for paragraphs 1(2) and 14(2) substitute—
  - (b) “(2) But see article 21 (power to acquire air-space) only of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X], which excludes the acquisition of airspace only from this Schedule”; and
  - (c) after paragraph 29 insert—

## “PART 4 INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 22 (temporary use of land for construction of works) and 23 (temporary use of land for maintenance of works) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X].”

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

- 20.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (4) Omit sections 5A(~~b~~) (time limit for general vesting declaration).
- (5) In section 5B(c) (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 26 (time limit for exercise of powers of acquisition) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X].”
- (6) In section 6(d) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to the Acquisition of Land Act 1981” substitute “section 14A of the Transport and Works Act 1992”.
- (7) In section 7(e) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (8) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- (9) “(2) But see article 21 (power to acquire air-space only) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X], which excludes the acquisition of airspace only from this Schedule”
- (10) References to the 1965 Act in the 1981 Act are ~~to be~~ construed as references to that Act as applied to the acquisition of land under article 18 (power to acquire land) by article 19 (application of Part 1 of the 1965 Act).

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- (a) ~~Schedule 2A was~~ inserted by paragraph 3 of Schedule 3 to the Housing and Planning Act 2016 (c. 22).
  - (b) ~~Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.~~
  - (c) ~~Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016. As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential) Act 1990.~~
  - (d) ~~Section 6 was~~ 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 (c.22).
  - (e) ~~Section 7 was~~ amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (~~e-22~~).
  - (f) ~~Schedule A1 was~~ inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (~~e-22~~).



### Power to acquire airspace only

21.—(1) The Company may acquire compulsorily so much of, or such rights in, the air-space over the land referred to in paragraph (1)(a) or (b) of article 18 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the Company acquires any part of, or rights in, the air-space over land under paragraph (1), the Company is not required to acquire an interest in any other part of the land.

### *Temporary possession of land*

### Temporary use of land for construction of works

22.—(1) The Company may, in connection with the carrying out of the authorised works—

- (a) enter on and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule; and
  - (ii) subject to paragraph (11), any other Order land in respect of which no notice of entry has been served under section 11(a) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(b) (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 7 or any mitigation works on that land.

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

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

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 7; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of this land was taken unless the Company has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.

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

- (a) restore the existing pond within plot 76;

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(a) [Section 11 wasAs](#) 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.

(b) [Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016.](#)

- (b) replace a building removed under this article; or
- (c) restore the land on which any works have been constructed under paragraph (1)(d).

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

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

(7) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(a) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a)(i).

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

(10) Section 13(b) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 19 (application of Part 1 of the 1965 Act).

(11) Paragraph (1)(a)(ii) does not authorise the Company to take temporary possession of any land which it is not authorised to acquire under article 19 (power to acquire land).

#### Temporary use of land for maintenance of works

23.—(1) Subject to paragraph (2), at any time during the maintenance period relating to the new railway, the Company may—

- (a) enter upon and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the railway or any ancillary works connected with it; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

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

(4) The Company may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of works 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 Company must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

(a) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(b) Section 13 was amended by sections 62(3) and 139 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).

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

(8) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 19 (application of Part 1 of the 1965 Act).

(11) In this article "the maintenance period" in relation to the new railway means the period of 5 years beginning with the date on which it is opened for use.

#### *Compensation*

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

**24.**—(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;
- (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 he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

#### *Supplementary*

#### **Extinction or suspension of private rights of way**

**25.**—(1) Subject to paragraph (5), 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 Company, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Company under section 11(1) (a) of the 1965 Act,

whichever is the sooner.

(2) Subject to paragraph (5), all private rights of way over land owned by the Company which, being within the limits of land which may be acquired shown on the Order plans, is required for the purposes of this Order are extinguished on the appropriation of the land for any of those purposes by the Company.

(3) Subject to paragraph (5), all private rights of way over land of which the Company takes temporary possession under this Order are suspended and unenforceable for as long as the Company remains in lawful possession of the land.

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(a) 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) Measures 2006, 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

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

(5) This article does not apply in relation to any right of way to which section 271 or 272(a) of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 6 (provisions relating to statutory undertakers etc.) applies.

(6) Paragraphs (1), (2), (3) and (4) have effect subject to—

(a) any notice given by the Company before—

(i) completion of the acquisition of;

(ii) the Company's appropriation of;

(iii) the Company's entry onto; or

(iv) the Company's taking temporary possession of,

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

(b) any agreement ~~made which makes reference to this article made~~ (whether before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of this Order) ~~which makes reference to this article~~ between the Company and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is mentioned in sub-paragraph (6)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, 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**

**26.**—(1) After the end of the period of 5 years beginning on the day on which the 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 19 (application of part 1 of the 1965 Act); and

(b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 20 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(b).

(2) The powers conferred by article 22 (temporary use of land for construction of works) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the Company remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

## **PART 4**

### **MISCELLANEOUS AND GENERAL**

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

**27.**—(1) ~~Defence to proceedings in respect of statutory nuisance w~~Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(c) in relation to a nuisance falling within paragraph

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

(b) 1981 c. 66.

(c) 1990 c.43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

(g) of section 79(1)(a) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows

- (a) that the nuisance relates to premises used by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the authorised works and that the nuisance is attributable to the carrying out of the authorised works in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61(b) (prior consent for work on construction sites) of the Control of Pollution Act 1974(c); or
- (b) that the nuisance is a consequence of the operation of the railway and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

#### **Power to lop trees overhanging the authorised works**

28.—(1) The Company may fell or lop any tree or shrub near any part of the authorised works, 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 works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers conferred by paragraph (1), the Company must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

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

#### **Power to operate and use railway**

29.—(1) The Company may operate and use the railway and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

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

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

30.—(1) The Company may—

- (a) transfer to KESR its right to construct, maintain, use or operate the railway, including the authorised works (or any part of them), and such related statutory rights as may be agreed between the Company and KESR; or

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(a) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

(b) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(c) 1974 c.40

(d) 1993 C. 43 As amended by the Transport Act 2000 (c.38) and the Railways Act 2005 (c.14).

- (b) grant to KESR for a period agreed between the Company and KESR the right to construct, maintain, use or operate the railway, including the authorised works (or any part of them) and such related statutory rights as may be so agreed;  
on such terms as may be agreed between the Company and KESR.
- (2) The Company may, with the consent of the Secretary of State—
  - (a) transfer to another person (“the transferee”) other than KESR its right to construct, maintain, use or operate the railway, including the authorised works (or any part of them), and such related statutory rights as may be agreed between the Company and the transferee; or
  - (b) grant to another person (“the lessee”) other than KESR for a period agreed between the Company and the lessee the right to construct, maintain, use or operate the railway, including the authorised works (or any part of them) and such related statutory rights as may be so agreed.
- (3) Where an agreement has been made by virtue of paragraphs (1) or (2) references in this Order to the Company include references to KESR or to the transferee or the lessee, as the case may be.
- (4) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraphs (1) or (2) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Company.
- (5) Upon any transfer or grant to KESR in accordance with paragraph (1), any bye-laws of KESR are to apply to the railway as they apply to the existing railway undertaking of KESR.

#### **Power to charge fares**

**31.** The Company may demand, take and recover or waive such charges for carrying passengers or goods on the railway, or for any other services or facilities provided in connection with the operation of the railway, as it thinks fit.

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

**32.** This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the railway or the right to operate the same; and
- (b) any agreement entered into by the Company with any person for the construction, maintenance, use or operation of the railway, or any part of ~~them~~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 is to be taken to prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law is to apply in relation to the rights and obligations of the parties to any lease granted by or under any 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.

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

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

- (a) obstructs any person acting under the authority of the Company in setting out the lines of the new railway 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 Company,

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

### **Removal of obstructions**

**34.**—(1) If any obstruction is caused to trains using the railway by a vehicle waiting, unloading, or breaking down on any part of the railway, the person in charge of the vehicle must immediately remove it and if that person fails to do so, the Company may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

- (a) any person by whom the vehicle was put or left so as to become an obstruction to trains, or
- (b) any person who was the owner of the vehicle at that time and who does not demonstrate that the vehicle was so put or left without the owner's knowledge or consent.

(2) If any obstruction is caused to trains using the railway by a load falling onto the railway from a vehicle, the person in charge of the vehicle must immediately remove the load from the railway, and if that person fails to do so, the Company may take all reasonable steps to remove the load and may recover the expenses reasonably incurred in doing so from—

- (a) any person who was in charge of the vehicle at the time the load fell from it; or
- (b) any person who was the owner of the vehicle at that time and who does not demonstrate that the vehicle was in the place at which the load fell from it without the owner's knowledge or consent.

(3) For the purposes of this article the owner of a vehicle is the person by whom the vehicle is kept and in determining for those purposes who was the owner of a vehicle at any time, it will be presumed, unless the contrary appears, that the owner was the person in whose name the vehicle was at that time registered under the Vehicle Excise and Registration Act 1994<sup>(a)</sup>.

### **Trespass**

**35.**—(1) Any person who—

- (a) trespasses on any part of the railway; or
- (b) trespasses on any land of the Company 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.

### **Saving for highway authorities**

**36.** Nothing in this Order affects any power of a highway authority to widen, alter, divert or improve any highway along which the railway is laid.

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<sup>(a)</sup> 1994 c. 22.

### **Statutory undertakers etc.**

37. The provisions of Schedule 6 (provisions relating to statutory undertakers etc.) have effect.

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

38. The Company must, as soon as practicable after the making of this Order, submit copies of the book of reference, the Order sections and the Order plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, Order sections and Order plans 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**

39.—(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<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

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

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled 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 part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

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<sup>(a)</sup> 1978 c.30.



- (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.

#### Protection of interests

40. Schedule 8 (protective ~~provisions on~~ provisions of interests) has effect.

#### No double recovery

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

#### Arbitration

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

#### Agreement between BRB (Residuary) Limited and Rother Valley Railway Limited

43.—(1) Upon the coming into force of this Order—

- (a) the Company shall, to the exclusion of the owner, be subject to all obligations statutory or otherwise relating to the railway line and the bridges and the airspace beneath them comprised in Railway No. 2 and referred to as plots 1 to 5 on the Order plans or any one of them (insofar as those obligations are still subsisting and capable of taking effect) to the intent that the owner shall be released from all such obligations; and
- (b) the agreement made between BRB (Residuary) Limited and Rother Valley Railway Limited and dated 12 September 2007 shall terminate with immediate effect such that its terms may not be enforced.

**Commented [JEW16]:** Incorporates the wording that was requested by DfT on behalf of HE HRE. see RVR/W1/2-05

(2) In this article, "the owner" means the Secretary of State for Transport or the Highways England Historic Railways Estate in its capacity as manager of the Historical Railways Estate, as defined by the Public Bodies (Abolition of BRB (Residuary) Limited Order 2013(a).

#### Crown Land

44.— (1) Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and, in particular, nothing in this Order authorises the Company or any other person to take, use, enter upon or in any manner interfere with any land, hereditament or rights of whatsoever description belonging to a government department without the consent in writing of that government department.

(2) Consent under this article may be given unconditionally or subject to such terms and conditions as may be considered necessary or appropriate.

Signed by authority of the Secretary of State

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

(a) S.I. 2013/2314

Date

Department for Transport

## SCHEDULES

### SCHEDULE 1

Articles 8 and 9

#### THE RAILWAY

##### PART 1

##### THE NEW RAILWAY

###### **In the county of East Sussex—**

Railway No. 3— A railway 3421 metres in length, commencing at a junction with Railway No. 2 on the western side of Northbridge Street and terminating at a junction with Railway No. 1 on the eastern side of the B2244 Road.

##### PART 2

##### THE EXISTING RAILWAYS

###### **In the county of East Sussex—**

Railway No.1— A railway 1165 metres in length, commencing at a junction with Railway No. 3 at its termination and terminating at its junction with the Kent and East Sussex Railway 225 metres west of Bodiam Station.

Railway No. 2— A railway 814 metres in length, commencing at a point 20 metres north of Station Road and terminating at its junction with Railway No. 3 on the western side of Northbridge Street.

### SCHEDULE 2

Articles 6 and 18

#### ACQUISITION OF LAND FOR ANCILLARY WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land on land plans</i>	<i>(3)</i> <i>Purposes for which land may be acquired</i>
County of East Sussex District of Rother	98	Provision of environmental mitigation works

### SCHEDULE 3

Article 10

#### STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
County of East Sussex District of Rother	Northbridge Street
County of East Sussex	A21 London Road

District of Rother	
County of East Sussex District of Rother	B2244 Junction Road
County of East Sussex District of Rother	Footpath S&R 31
County of East Sussex District of Rother	Bridleway S&R 36b

#### SCHEDULE 4

Article 12

#### STREETS TO BE TEMPORARILY STOPPED UP

(1) <i>Area</i>	(2) <i>Street to be temporarily stopped up</i>	(3) <i>Extent of temporary stopping up</i>
County of East Sussex District of Rother	Northbridge Street/The Clappers	Between T1 and T2
County of East Sussex District of Rother	A21 London Road	Between T3 and T4
County of East Sussex District of Rother	Bridleway S&R 36b	Between points T5, T7 -and T6
County of East Sussex District of Rother	B2244 Junction Road	Between points T8 and T9

**Commented [JEW17]:** To accord with Order plan. Stopping up is between T5 and T6 but diversion includes T7.

#### SCHEDULE 5

Article 15

#### LEVEL CROSSINGS

(1) <i>Area</i>	(2) <i>Road</i>
County of East Sussex District of Rother	Northbridge Street
County of East Sussex District of Rother	A21 London Road
County of East Sussex District of Rother	Bridleway S&R 36b
County of East Sussex District of Rother	B2244 Junction Road

#### SCHEDULE 6

Article 10 and 37

#### PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

1.—(1) Sections 271 to 274(a) (extinguishment of rights of statutory undertakers etc.) of the 1990 Act apply in relation to any land acquired or appropriated by the Company under this Order subject to the following provisions of this paragraph: 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 on the extinguishment of any rights under sections 271 and 272, and

(a) Section 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

sections 279(2) to (4), 280 and 282(a), which provide for the payment of compensation) have effect accordingly.

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

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the Company 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.

(4) Sub-paragraph (3) does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

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

is entitled to recover from the Company 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.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which paragraph 2, or Part 3 of the 1991 Act, applies.

(6) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003<sup>(b)</sup>; and

“public utility undertakers” has the same meaning as in the Highways Act 1980<sup>(c)</sup>.

*Apparatus of statutory undertakers etc. in stopped up streets*

2.—(1) Where a street is stopped up under article 11 (stopping up of street) any statutory utility whose apparatus is under, in, upon, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 11, any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by the Company must—

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

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

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

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(a) Section 279(3) was amended by paragraph 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.

(b) 2003 c. 21.

(c) 1980 c. 66

(4) If in the course of the execution of relocation works under sub-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 Company, 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 sub-paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of sub-paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint or cable is agreed, or is determined to be necessary, the consequential provisions of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Sub-paragraphs (3) to (6) do not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the Company and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this paragraph—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

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

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in paragraph 1(6).

## SCHEDULE 7

Article 22

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) Area	(2) Number of land shown on the deposited plans	(3) Purpose for which temporary possession may be taken	(4) Relevant part of the authorised works
County of East Sussex District of Rother	16, 45, 56, 104, 107, 108, 122, 123	Worksite and access for construction of the authorised works	Construction of new railway
County of East Sussex	22, 23, 28, <del>29</del> 38, 46,	Worksite and access	Construction of new

Commented [JEW18]: Included in error – is survey only plot.

District of Rother	47	for construction of authorised works	railway
County of East Sussex District of Rother	67	Worksite and provision of farm access over existing drain	Construction of new railway
County of East Sussex District of Rother	69, 70	Worksite and provision of mounting blocks	Construction of new railway
County of East Sussex District of Rother	87, 93, 109	Provision of farm access	Mitigation works

## SCHEDULE 8 Article 40

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND ~~SE~~WERAGE UNDERTAKERS

**1.** For the protection of the undertakers referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the Company and the undertaker concerned, have effect.

**2.** The provisions of paragraph 1 of Schedule 6 (provisions relating to statutory undertakers etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

**3.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989<sup>(a)</sup>), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

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

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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

**4.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the Company and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

**5.** Regardless of any provision in this Order or anything shown on the land plans, the Company must not acquire any apparatus otherwise than by agreement.

**6.—(1)** If in the exercise of the powers conferred by this Order, the Company acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the Company requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the Company must, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the Company and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the Company, or the Company is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question must, on receipt of a written notice to that effect from the Company, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the Company under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Company or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the Company to be removed under the provisions of this Part of this Schedule.

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(a) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).



(6) Regardless of anything in sub-paragraph (5), if the Company gives notice in writing to the undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the Company, that work, instead of being executed by the undertaker, must be executed by the Company without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) authorises the Company to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Company affords to an undertaker facilities and rights for the construction and maintenance in land of the Company of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the Company and the undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of the Company, the arbitrator must—

- (a) give effect to all reasonable requirements of the Company for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Company or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the Company in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the Company to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the Company under paragraph 5(2), the Company must submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the Company, reasonably requires the removal of any apparatus and gives written notice to the Company of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the Company under paragraph 5(2).

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

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

**9.—**(1) Subject to the following provisions of this paragraph, the Company must repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**10.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the Company must—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the Company with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

(3) An undertaker must give the Company reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the Company which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**12.—**(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between the Company and the operator, have effect.

(2) In this Part of this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act<sup>(a)</sup>;

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

**13.—**(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised works or their construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or

(b) there is any interruption in the supply of the service provided by an operator,

the Company must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—

(i) make reasonable compensation to an operator for loss sustained by it; and

(ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

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<sup>(a)</sup> See section 106.

(2) Nothing in sub-paragraph (1) imposes any liability on the Company with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the Company reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of the Company which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the Company and the operator under this paragraph is to be referred to and settled by arbitration under article 42 (arbitration).

**14.** This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the Company and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

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

### **PART 3**

#### **FOR THE PROTECTION OF DRAINAGE AUTHORITIES AND THE ENVIRONMENT AGENCY**

**16.—**(1) The following provisions of this Part of this Schedule apply for the protection of the drainage authority unless otherwise agreed in writing between the Company and the drainage authority.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“a category 1 specified work” means so much of any permanent or temporary work or operation authorised by this Order (which includes, for the avoidance of doubt, any dredging and any any geotechnical investigations that may be undertaken) as consists of—

- (a) erecting any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect any drainage work which is or includes a main river or the volumetric rate of flow of water in or flowing to or from any main river;
- (b) the carrying out of any work of alteration or repair of any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect the flow of water in the main river or to affect any drainage work;
- (c) erecting or altering any structure (whether temporary or permanent) designed to contain or divert the floodwaters of any part of a main river; ~~or~~

(d) any work or operation that is in, on, under, over or within 46.8 metres of a drainage work which is or includes a main river or is otherwise likely to affect any such drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;-

(e) any work likely to affect the flow, purity or quality of water in any watercourse or other surface waters or groundwater; or

~~(d)(f)~~ any work or operation likely to cause obstruction to the free passage of fish or damage to any fishery.

“a category 2 specified work” means any of the following—

- (a) erecting any mill dam, weir or other like obstruction to the flow of any ordinary watercourse, or raising or otherwise altering any such obstruction;
- (b) erecting a culvert in any ordinary watercourse;

**Commented [JEW19]:** Amendments agreed with Environment Agency

- (c) altering a culvert in a manner that would be likely to affect the flow of any ordinary watercourse; or
- (d) altering, removing or replacing a structure or feature designated by a local drainage authority under Schedule 1 to the Flood and Water Management Act 2010(a);

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” are construed accordingly;

“the drainage authority” means—

- (a) in relation to a category 1 specified work, the Agency;
- (b) in relation to a category 2 specified work, the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(b).

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“the fishery” means any waters containing fish and the spawn, habitat or food of such fish;

“a main river” and “ordinary watercourse” have the meanings given by respectively the Water Resources Act 1991(c) and the Land Drainage Act 1991;

“plans” includes but is not limited to sections, drawings, specifications and method statements;

“specified work” means a category 1 specified work or a category 2 specified work.—

**17.**—(1) Before beginning to construct any specified work, the Company must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 27.

(3) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld;
- (b) is deemed to have been refused/given if it is neither given nor refused within 2 months of the receipt of the plans for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, fishery, aquatic wildlife, water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The drainage authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

**18.** Without limitation on the scope of paragraph 17~~9~~, the requirements which the drainage authority may make under that paragraph include conditions requiring the Company at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- ~~(b)~~ to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,
- (b) by reason of any specified work;

**Commented [JEW20]:** Left open by the parties to be settled by the Secretary of State.

(a) 2010 c. 29  
(b) 1991 c. 59  
(c) 1991 c. 57

- (c) ~~to provide environmental protection for aquatic wildlife.~~

**19.—**(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 18, must be constructed—

- (a) ~~W~~without unnecessary delay in accordance with the plans approved or settled under this Part of this Schedule; and  
(b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The Company must give to the drainage authority not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice in writing require the Company at the Company's own expense to comply with the requirements of this Part of this Schedule or (if the Company so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 23, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Company, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the Company.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

(6) If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the Company must provide such alternative means of access to allow the Agency to maintain the flood defence or use the equipment no less effectively than before the obstruction.

**20.—**(1) Subject to sub-paragraph (5) the Company must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the Company for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the Company is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the Company to repair and restore the work, or any part of such work, or (if the Company so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to paragraph ~~20 and~~ 23, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the Company, the Company has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of an emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not precluded by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

**21.** Subject to paragraph 23, if by reason of the construction of any protective works or specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the Company to the reasonable satisfaction of the drainage authority and if the Company fails to do so, the drainage authority may make good the same and recover from the Company the expense reasonably incurred by it in so doing.

**22.—**(1) The Company must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Company requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 23, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Company fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Company the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 23, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Company the reasonable cost of so doing provided that notice specifying those steps is served on the Company as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**23.** Nothing in paragraphs 19(4), 20(3), 21, 22(3) and (4) authorises the drainage authority to execute works on or affecting an operational railway forming part of the Company's undertaking without the prior consent in writing of the Company such consent not to be unreasonably withheld or delayed.

**24.** The Company must indemnify the drainage authority in respect of all costs, charges and expenses which the drainage authority may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the drainage authority under this Part of this Schedule.

**25.—**(1) Without affecting the other provisions of this Part of this Schedule, the Company must indemnify the drainage authority from all claims, demands, proceedings, costs, charges, penalties, damages, expenses and losses, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands, ~~or~~
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater; or
- ~~(e)(f)~~ any damage to aquatic wildlife;

which is caused by the construction of any of the specified works and protective works or any act or omission of the Company, its contractors, agents or employees whilst engaged upon the work.

(2) The drainage authority must give to the Company reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the Company which agreement must not be unreasonably withheld or delayed.

**26.** The fact that any work or thing has been executed or done by the Company in accordance with plans approved by the drainage authority, or to the drainage authority's satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the Company from any liability under the provisions of this Part of this Schedule.

**27.** Any dispute arising between the Company and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 42 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the Company or the drainage authority, after notice in writing by one to the other.

## PART 4

### FOR THE PROTECTION OF HIGHWAYS ENGLAND

#### Application

28.—(1) The provisions of this Part of this Schedule apply to the HE works and have effect unless otherwise agreed in writing between the Company and Highways England.

(2) Highways England must act reasonably and in good faith when considering any request for approval pursuant to these protective provisions and when negotiating any agreement, strategy or other arrangement referred to in or otherwise contemplated by these provisions or subsequent iteration of such agreement, strategy or arrangement.

#### Interpretation

29.—(1) Where the terms defined in article 2 of this Order are inconsistent with subparagraph (2) below the latter prevail.

(2) In this Schedule—

“as built information” means one electronic copy of the following information—

(a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the Company; in compliance with DMRB GG184 Standards for Highways or any successor document;

(b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);

(c) product data sheets and technical specifications for all materials used;



(d) as constructed information for any utilities discovered or moved during the works;

(e) method statements for the works carried out;

(f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;

(g) organisation and methods manuals for all products used;

(h) as constructed programme;

(i) test results and records as required by the detailed design information and during construction phase of the project;

(j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the Company and Highways England both acting reasonably;

(k) the health and safety file; and

(l) such other information as is reasonably required by Highways England to be used to update all relevant databases and to ensure compliance with Highways England's Asset Data Management Manual as is in operation at the relevant time.

"the bond sum" means the sum equal to 200% of the cost of the carrying out the HE works (to include all costs plus any commuted sum) or such other sum agreed between the Company and Highways England;

"the cash surety" means the sum agreed between the Company and Highways England once the Level Crossing Order relating to the A21 has been made as a surety for the purposes of paragraph 39 (security) of these provisions;

"commuted sum" means such sum calculated as provided for in paragraph 41 of this Part of this Schedule to be used to fund any additional future cost to Highways England of maintaining the trunk road arising as a result of the HE works;

"condition survey" means a survey of the condition of Highways England structures and assets within the Order limits or other structures and assets that in the reasonable opinion of HE may be affected by the HE works;

"contractor" means the contractor and any subcontractor appointed by the Company to carry out the HE works;

"defects period" means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

"DLOA" means a detailed local operating agreement or other maintenance and repair strategy entered into by Highways England and the Company that will set out the agreed operational and communication protocols for the trunk road and define the obligations of the Company in relation to maintenance during both the construction phase of the HE works and following the issue of the final certificate, and will define those parts of the HE works that are within the railway corridor and/or comprise part of the level crossing and its associated infrastructure or assets that will fall to the Company to maintain following the issue of the final certificate and will include a dispute resolution provision based on paragraph 45 of this part of this Schedule;

"detailed design information" means only such of the following drawings specifications and calculations as are relevant to the development—

(a) site clearance details;

(b) boundary, environmental and mitigation fencing;

(c) road restraints systems and supporting road restraint risk appraisal process assessment;

(d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage Surveys – Standards for Highways;

(e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;

(f) pavement, pavement foundations, kerbs, footways and paved areas;

(g) traffic signs and road markings;

(h) traffic signal equipment and associated signal phasing and timing detail;

(i) road lighting (including columns and brackets);

(w) regime of California Bearing Ratio testing;

(j) electrical work for road lighting, traffic signs and signals;

(k) highway structures and any required structural approval in principle;

(l) landscaping;

(m) proposed departures from DMRB standards;

(n) walking, cycling and horse-riding assessment and review report;

(o) utilities diversions;

(p) topographical survey;

(q) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;

(r) health and safety information including any asbestos survey required by DMRB GG105 Asbestos management or any successor document; and

(s) other such information that may be reasonably required by Highways England to be used to inform the detailed design of the HE works,

“dilapidation survey” means a survey of the condition of the roads, bridges and retaining walls along the routes approved for construction traffic for the authorised works;

“DMRB” means the Design Management for Roads and Bridges published at <https://www.standardsforhighways.co.uk/dmrb/> or any replacement or modification of it;

“final certificate” the certificate relating to those aspects of the HE works that have resulted in any alteration to the trunk road to be issued by Highways England pursuant to paragraph 38;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised works required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“HE works” means all the authorised works and associated works relating to the construction, maintenance and operation of a level crossing over the A21 at Robertsbridge, East Sussex and required by an Order made under the Level Crossing Act and any works by or on behalf of the Company that are in, on or under the trunk road or other Highways England land, including, without limitation, works to form or layout means of access to the trunk road and works to the trunk road highway drainage;

“nominated persons” means the Company’s representatives or the contractor’s representatives on site during the carrying out of the HE works as notified to Highways England from time to time;

“programme of works” means a document setting out the sequence and timetabling of the HE works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the HE works that have resulted in any alteration to the trunk road to be issued by Highways England in accordance with paragraph 35 when it considers the HE works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard GG119 or any replacement or modification of it;

“RSA actions” means those actions identified in the RSA decision log;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by Highways England and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the trunk road network;

“trunk road” means the A21 trunk road near Robertsbridge, East Sussex, at the location of the proposed level crossing forming part of the HE works; and

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991;

“walking, cycling and horse-riding assessment and review process” means the process set out in the walking, cycling and horse-riding assessment and review standard;

“walking, cycling and horse-riding assessment and review standard” means DMRB standard GG142 or any replacement or modification of it.

### **Prior Approvals and Security**

30. In the event that HE reasonably requires, or the Company reasonably considers that the implementation of the Order requires, the carrying out of works of improvement to the trunk road that are outside of the Order Limits, the parties must enter into an agreement to provide for the carrying out of those works and the Company must be responsible for the costs of such works, including the costs of Highways England incurred in connection with the agreement and its implementation.

31—(1) The HE works must not commence until:

(a) stage 1 and a stage 2 road safety audit processes have been completed in full accordance with the road safety audit standard;

(b) the programme of works has been approved by Highways England;

(c) the detailed design of the HE works comprising of the following details, insofar as considered relevant by Highways England has been submitted to and approved by Highways England:-

(i) the detailed design information, incorporating the RSA actions;

(ii) details of the proposed road space bookings;

(iii) a scheme of traffic management;

- (iv) the identity of the contractor and nominated persons;
- (v) a process for stakeholder liaison, with key stakeholders to be identified and agreed between Highways England and the Company, both acting reasonably;
- (vi) the walking, cycling and horse-riding assessment and review process appropriate to the completion of detailed design has been completed; and
- (d) in the event that Highways England considers that an amendment to the speed limit in the vicinity of the level crossing or other measures under the Road Traffic Regulation Act 1984 are reasonably necessary to secure the safety and efficiency of the A21, that a Road Traffic Regulation Order has been made to give force to those measures.
- (e) a scheme of traffic management has been submitted by the Company and approved by Highways England such scheme to be capable of amendment by agreement between the Company and Highways England from time to time.
- (f) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the Company and Highways England under sub-paragraph (c)(v) above;
- (g) The Company has agreed the estimate of the commuted sum with Highways England, both acting reasonably;
- (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the Company during the construction of the HE works has been agreed in writing by Highways England;
- (i) the Company has procured to Highways England collateral warranties in a form approved by Highways England from the contractor and designer of the HE works in favour of Highways England to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the HE works, including in the selection of materials, goods, equipment and plant;
- (j) a condition survey and regime of monitoring of any Highways England assets or structures that Highways England, in its reasonable opinion, considers will be affected by the HE works, has been agreed in writing by Highways England; and
- (k) a DLOA has been entered into, the completion of which must not be unreasonably withheld or delayed by either party
- (2) Highways England must provide the Company with a list, to be agreed between the Company and Highways England, both acting reasonably, of all structures and assets to be subject to a condition survey and regime of monitoring pursuant to paragraph 31(1)(j) before the first condition survey is conducted.
- (3) Highways England must prior to the commencement of the HE works inform the Company of the identity of the person who will act as a point of contact on behalf of Highways England for consideration of the information required under sub-paragraph (1).
- (4) Highways England must notify the Company of its approval or, as the case may be, of its disapproval of any matter under paragraph 31 and the grounds of disapproval within 56 days of the information required under this paragraph being received by Highways England.
- (5) In the event of any disapproval, the Company may re-submit the information required under the relevant sub-paragraph with modifications and Highways England must notify the Company of its approval or disapproval and the grounds of disapproval within 56 days of the revised detailed design being received by Highways England.
- (6) Approval under this paragraph may be given subject to such reasonable requirements as Highways England may make for the protection of the A21 in the vicinity of the HE works.
- (7) In its approval of the contractor pursuant to sub-paragraph 31(1)(c)(iv), Highways England shall be entitled to take into consideration the experience and expertise of the

proposed contractor, including previous experience of level crossing installation over the public highway. Highways England shall not be acting unreasonably if, in Highways England's reasonable opinion, the proposed contractor does not have sufficient experience and expertise, but shall not be entitled to refuse to approve a contractor merely on grounds that the contractor is providing services to the Company in a volunteer capacity, or intends to use suitably experienced volunteer workers to carry out all or part of the HE works.

#### **Construction traffic and route surveys**

32—(1) The HE works must not commence until a dilapidation survey of the condition of the roads, bridges and retaining walls along the routes approved for construction traffic for the authorised development has been carried out by the Company and has been submitted to and approved in writing by Highways England.

(2) No more than 28 days after the completion of construction of the authorised development, the roads, bridges and retaining walls surveyed under sub-paragraph (1) must be re-surveyed by the Company.

(3) If the re-survey carried out under sub-paragraph (2) indicates that there has been damage to the roads, bridges or retaining walls that have been surveyed, and that such damage is attributable to the use of those roads, bridges and retaining walls by construction traffic for the authorised development, the Company must submit a scheme of remedial works for those damaged roads, bridges and retaining walls to Highways England for its approval in writing, which must not be unreasonably withheld.

#### **Construction of the HE works**

33—(1) The Company must, prior to commencement of the HE works, give to Highways England 28 days' notice in writing of the date on which the HE works will start unless otherwise agreed by Highways England, acting reasonably.

(2) The Company must comply with Highways England's road space booking procedures (in accordance with Highways England's Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy) prior to and during the carrying out the HE works and no HE works for which a road space booking is required shall commence without a road space booking having first been secured, Highways England acting reasonably.

(3) The HE works must be carried out to the reasonable satisfaction of Highways England in accordance with—

(a) the relevant detailed design information and programme of works approved pursuant to paragraph 31(1) above or as subsequently varied by agreement between the Company and Highways England, both acting reasonably;

(b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works together with all other relevant standards and guidance as reasonably required by Highways England to include, inter alia; all relevant interim advice notes and the Traffic Signs Manual and save to the extent that exceptions from those standards and guidance apply which have been approved by Highways England;

(c) the Traffic Signs Regulations and General Directions 2016 and any amendment to or replacement thereof for the time being in force;

(d) such approvals or requirements of Highways England that are required by the provisions of paragraph 31 to be in place prior to commencement of the HE works;

(e) insofar as relevant to the HE works, all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the Company, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the reasonable satisfaction of Highways England; and

(f) the requirements of the DLOA.

(4) The Company must permit and must require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the Company by Highways England) to gain access to the HE works for the purposes of inspection and supervision of the HE works.

(5) The Company must permit and must require the contractor to act upon any reasonable request made by Highways England in relation to the construction of the HE works as soon as reasonably practicable provided such a request is not inconsistent with and does not fall outside the contractor's obligations under its contract with the Company or the Company's powers or obligations under the Order.

(6) If any part of the HE works is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Highways England may by notice in writing require the Company, at the Company's own expense, to comply with the requirements of this Part of this Schedule.

(7) If within 28 days on which a notice under sub-paragraph (6) is served on the Company (or in the event of there being (in the reasonable opinion of Highways England) a danger to road users, within such lesser period as Highways England may stipulate), the Company has failed to take the steps required by that notice, Highways England may carry out:

(a) the HE works; or

(b) such works to reinstate the highway and other land and premises of Highways England as may be reasonably necessary to eliminate the significant danger to road users, and

Highways England may in either case recover from the Company any expenditure reasonably incurred by it in so doing.

(8) If during the carrying out of the authorised works the Company causes damage to the strategic road network then Highways England may by notice in writing require the Company, at the Company's own expense, to remedy the damage.

(9) If within 28 days of the date on which a notice under sub-paragraph (8) is served on the Company, the Company has failed to take steps to comply with the notice, Highways England may carry out the steps required of the Company and may recover from the Company any expenditure reasonably incurred by Highways England in so doing, such sum to be payable within 28 days of demand.

(10) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking any such action as it reasonably believes to be necessary as a result or in connection with of the carrying out or maintenance of the authorised works without prior notice to the Company in the event of an emergency or to prevent the occurrence of danger to road users and Highways England may recover from the Company any reasonable expenditure incurred by Highways England in so doing.

(11) In constructing the HE works, the Company must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the reasonable satisfaction of Highways England.

#### **Payments**

34—(1) The Company must fund the whole of the cost of the HE works and all costs incidental to the HE works and must also pay to Highways England in respect of the HE works a sum equal to the whole of any costs and expenses which Highways England reasonably incurs (including reasonable costs and expenses for using internal or external staff) in relation to the HE works including—

(a) the checking and approval of the information required under paragraph 31(1);

(b) the supervision of the HE works;

(c) all costs in relation to the transfer of any land required for the HE works; and

(d) all legal and administrative costs in relation to (a), (b) and (c) above;

(e) any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the HE costs”.

(2) The Company must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the HE works.

(3) Highways England must, within 28 days of receipt of a written request from the Company to do so, provide the Company with a schedule showing its estimate of the HE costs prior to the commencement of the HE works and the Company must pay to Highways England the estimate of the HE costs prior to commencing the HE works and in any event prior to Highways England incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, Highways England reasonably believes that the HE costs will exceed the estimated HE costs it may give notice to the Company of the amount that it believes the HE costs will exceed the estimate of the HE costs (excess) and the Company must pay to Highways England within 28 days of the date of the notice a sum equal to the excess.

(5) Highways England must give the Company a final account of the costs referred to in sub paragraph (1) above within 91 days of the issue of the provisional certificate pursuant to paragraph 35.

(6) Within 28 days of the issue of the final account:

(a) if the final account shows a further sum as due to Highways England the Company must pay to Highways England the sum shown due to it;

(b) if the account shows that the payment or payments previously made by the Company have exceeded the costs incurred by Highways England, Highways England must refund the difference to the Company.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 2% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

#### **Completion**

35—(1) Following any closure or partial closure of the trunk road for the purposes of carrying out the HE works, the Company must give Highways England the opportunity to carry out a site inspection in order for Highways England to satisfy itself that the trunk road is, in its reasonable opinion, safe for traffic and the Company must comply with any reasonable requirements of Highways England prior to opening the trunk road.

(2) As soon as the Company considers that the provisional certificate may be properly issued it must apply to Highways England for the provisional certificate.

(3) Following an application for a provisional certificate, Highways England must as soon as reasonably practicable:

(a) inspect the HE works; and

(b) provide the Company with a written list of works that HE, acting reasonably, considers are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

(a) a stage 3 road safety audit process for the HE works has been completed in full accordance with the road safety audit standard;

(b) the HE works incorporating the RSA actions have been completed to the reasonable satisfaction of Highways England;

(c) any further works notified to the Company by Highways England pursuant to sub-paragraph 7(3)(b) have been completed to the reasonable satisfaction of Highways England;

(d) the as built information has been provided to Highways England; and

(e) the Company has paid the commuted sum to Highways England.

Highways England must issue the provisional certificate.

(5) The Company must at its own expense remedy any defects in the HE Works as are reasonably required by Highways England to be remedied during the defects period and must continue to comply with the requirements of the DLOA. All identified defects must be remedied in accordance with the following timescales—

(a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of Highways England);

(b) in respect of matters which Highways England considers, acting reasonably, to be serious defects or faults, within 14 days of receiving notification of the same; and

(c) in respect of all other defects notified to the Company, within 4 weeks of receiving notification of the same.

(6) Following the issue of the provisional certificate Highways England has responsibility for routine maintenance of the highway save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the Company.

(7) The Company must submit stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The Company must comply with the findings of the stage 4 road safety audits and must pay all costs of and incidental to such and provide updated as-built information to Highways England.

#### **Final condition survey**

36—(1) The Company must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 35(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to Highways England for its approval, such approval not to be unreasonably withheld or delayed.

(2) If the re-survey carried out pursuant to sub-paragraph (1) indicates that any damage has been caused to a structure or asset, the Company must submit a scheme for remedial works in writing to Highways England for its approval in writing, such approval not to be unreasonably withheld or delayed, and the Company must carry out the remedial works at its own cost and in accordance with the scheme submitted.



(3) If the Company fails to carry out the remedial work in accordance with the approved scheme, Highways England may carry out the steps required of the Company and may recover any expenditure it reasonably incurs in so doing.

(4) Highways England may, at its discretion, at the same time as giving its approval to the re-survey pursuant to sub-paragraph (1) give notice in writing that Highways England will remedy any damage identified in the re-survey and Highways England may recover any expenditure it reasonably incurs in so doing.

(5) The Company must make available to Highways England upon reasonable request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the Company may from time to time carry out.

### **Opening**

37—(1) The Company must notify Highways England of the intended date of opening to the public of the railway authorised by the Order not less than 56 days in advance of the intended date and the Company must notify Highways England of the actual date the HE works will be brought into operation within 14 days of that date.

(2) The level crossing must not be opened for traffic until all such works as are set out in any agreement entered into pursuant to paragraph 30 are completed in accordance with the terms of the agreement and any traffic regulation measures pursuant to paragraph 31(1)(d) are in force.

### **Final Certificate**

38—(1) The Company must apply to Highways England for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, Highways England must as soon as reasonably practicable:

(a) inspect the HE works; and

(b) provide the company with a written list of any further works required to remedy or make good any defect or damage in the HE works or confirmation that no such works are required for this purpose.

(3) The Company must carry out such works notified to it pursuant to sub-paragraph (2).

(4) When Highways England is satisfied, acting reasonably, that any defects or damage arising from defects during the defects period and any defects notified to the Company pursuant to sub-paragraph (2) and any remedial works required as a result of the stage 4 RSA safety audit have been made good to the reasonable satisfaction of Highways England, Highways England must issue the final certificate.

(5) The Company must pay to Highways England within 28 days of demand the costs reasonably incurred by Highways England in identifying the defects and supervising and inspecting the Company's work to remedy the defects that it is required to remedy pursuant to these provisions.

### **Security**

39—(1) The HE works must not commence until—

(a) the HE works are secured by a bond from a bondsman first approved by Highways England substantially in the form of the draft bond attached at Annex 1 or such other form that may be agreed between the Company and Highways England to indemnify Highways England against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the Company in respect of the HE works under the provisions of

this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and

(b) prior to the commencement of the HE works the Company must provide the cash surety which may be utilised by Highways England in the event of the Company failing to meet its obligations to make payments under paragraph 34 or to carry out works the need for which arises from a breach of one or more of the obligations of the Company under the provisions of this Part of this Schedule (which must for the avoidance of doubt be a single cash surety for the entire value of the HE works).

(2) The bond sum and the cash surety must be progressively reduced as follows—

(a) within 20 working days of the issue of the provisional certificate pursuant to paragraph 35(1) Highways England must release the bond provider from its obligations in respect of 80% of the bond sum save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs to settle the claim or claims; and

(b) within 20 working days of the issue of the final certificate pursuant to paragraph 37 Highways England must in writing release the bond provider from its obligations in respect of all remaining liability and release the remainder of the cash security to the Company save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs to settle the claim or claims.

(3) Any sums payable to Highways England pursuant to these protective provisions shall be reduced by an amount equivalent to such sums as are payable by the Company to Highways England or the Secretary of State pursuant to the indemnity and any other arrangements for the reimbursement of the costs of Highways England and/or the Secretary of State for Transport that are required for compliance with the discharge of planning conditions relevant to the authorised works pursuant to Rother District Council's grant of planning permission reference RR/2014/1608/P, so that there shall be no double recovery by Highways England or the Secretary of State.

#### **Commuted sums**

40. Highways England must provide to the Company an estimate of the commuted lump sum prior to the commencement of the HE works.

41. The Company must pay to Highways England the Commuted Sum calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 prior to the issue of the provisional certificate pursuant to paragraph 35(1).

#### **Insurance**

42. The Company must prior to commencement of the HE works effect sufficient public liability insurance with an insurer to indemnify Highways England in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the HE works or the use of the HE works by the Company and must provide evidence of such insurance having been taken out prior to commencement of the HE works.

#### **Indemnity**

43.—(1) The Company must indemnify Highways England from and against all costs, expenses, damages, losses and liabilities suffered by Highways England arising from or in connection with any claim, demand, action or proceedings (including but not limited to statutory claims) resulting from:

(a) the construction and maintenance of the HE works; and

(b) the use of the HE works

PROVIDED THAT—

(c) Highways England notifies the Company upon receipt of any claim; and

(d) Highways England following the acceptance of any claim notifies the quantum of the claim to the Company in writing.

(2) Within 14 days of the receipt of the notification referred to in sub-paragraph (1)(c) the Company must pay to Highways England the amount specified as the quantum of such claim.

(3) Sub-paragraphs (1) and (2) do not apply if the costs, expenses, liabilities and damages were caused by or arose out of the neglect or default of Highways England or its officers, servants, agents or contractors or any person or body for whom it is responsible.

(4) Highways England must not settle any claim without first consulting the Company and having all proper regards to the Company's response to such consultation.

#### Maintenance of the HE works

44.—(1) Following the issue of the Final Certificate, the Company must maintain those parts of the HE works that it is required to maintain under the DLOA, in accordance with the DLOA.

(2) If the Company fails to maintain any part of the HE works which it is required to maintain pursuant to the DLOA and Highways England reasonably considers that such failure to maintain is causing or may cause a danger to road users or damage to the strategic road network or a Highways England asset or structure, or excessive delays to road users, Highways England may by notice in writing require the Company, at the Company's own expense, to comply with the requirements of this Part of this Schedule.

(3) If within 28 days on which a notice under sub-paragraph (2) is served on the Company (or in the event of there being in the reasonable opinion of Highways England a danger to or delay to road users within such lesser period as Highways England may stipulate), the Company has failed to take the steps required by that notice, Highways England may carry out such works as it reasonably considers necessary and may recover from the Company any expenditure reasonably incurred by it in so doing.

(4) The Company must, prior to the commencement of any works of maintenance to the HE works for which it is responsible pursuant to the DLOA, give Highways England 28 days' notice in writing of the date on which such maintenance works will start unless otherwise agreed by Highways England, acting reasonably; and where carrying out maintenance works following a notice served on it by Highways England pursuant to paragraph 44(2) above, the Company must give as much notice as is reasonably practicable.

(5) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking any such action as it reasonably believes to be necessary in respect of any part of the HE works that the Company are required to maintain pursuant to the DLOA without prior notice to the Company in the event of emergency or to prevent the occurrence of danger or significant delay to road users and Highways England may recover from the Company any reasonable expenditure incurred by Highways England in so doing.

(6) If, for the purposes of maintaining the works pursuant to this paragraph 44, the Company needs to occupy any road space, the Company must comply with Highways England's road space booking requirements and no maintenance works for which a road space booking is required shall commence without a road space booking having first been secured.

(7) The Company must comply with any reasonable requirements that Highways England may notify to the Company, such requirements to be notified to the Company not less than 7 days in advance of the planned commencement date of the maintenance works.

(8) The provisions of paragraph 35(1) shall apply to the opening of any part of the trunk road following occupation of any road space under sub-paragraph 43(1) above.

#### **Expert Determination**

45.—(1) Article 42 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;

(c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and

(d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

#### **Annex 1**

BY THIS BOND [ ] [(Company Regn No )] whose registered office is situate at [ ] ("the Company") and [ ] [(Company Regn No )] whose registered office is situate at [ ] ("the Surety") are jointly and severally bound to [ ] of [ ] ("the [ ]") this [ ] day of [ ] 200[ ] in the sum of [ ] pounds (£[Surety Sum to the payment of which sum the Company and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under an Order under the Transport and Works Act 1992 known as The Rother Valley Railway (Bodiam to Robertsbridge Junction Order 201[ ] ("the Order") the Company is empowered to commence execute perform and complete the highway works to the A21 Trunk Road mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the Order and also to pay to Highways England such sums as are therein provided NOW THE CONDITIONS of this Bond are such that if the Company shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part [ ] of Schedule [ ] of the Order on the Company's part to be observed and performed according to the true purport intent and meaning thereof or if on default by the Company the Surety shall satisfy and

discharge the damages sustained by Highways England thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the Order (and including any reductions as provided for in the Order) but no allowance of time by Highways England under the Order nor any forbearance or forgiveness in or in respect of any matter or thing concerning the Order on the part of Highways England shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 39(2) of Part 4 of Schedule 8 of the Order.

[Attestation]

## EXPLANATORY NOTE

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

This Order authorises the Company to construct the new railway and maintain the new and existing railways in East Sussex from the point at which the existing Kent and East Sussex Railway terminates at Bodiam to a new terminus at Robertsbridge Junction station in Robertsbridge.

The Order authorises level crossings across Northbridge Street and the A21 at Robertsbridge, the B2244 at Udiam and across ~~one footpath and one combined footpath and~~ one footpath and one combined footpath and ~~bridleway.~~

The Order also authorises the acquisition of land ~~and rights in land~~, and the use of land, for this purpose.

Copies of the Order plans and sections and the book of reference referred to in the Order may be inspected at the offices of Rother Valley Railway Limited at Robertsbridge Junction Station, Robertsbridge, East Sussex, TN32 5DG

**Commented [JEW21]:** Correction – the footpath crossing goes under the railway. The “combined footpath and bridleway” is a designated bridleway.

**Commented [JEW22]:** The Order does not include any rights or easements over land.

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STATUTORY INSTRUMENTS

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201X No.[XXXX]

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Rother Valley Railway (Bodiam to Robertsbridge Junction)  
Order

*Made* - - - - \*\*\*

*Coming into force* - - \*\*\*

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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>(a)</sup> for an Order under sections 1 and 5 of the Transport and Works Act 1992<sup>(b)</sup> (“the 1992 Act”).

The Secretary of State has 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 [without modifications][with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals]][proposals concerned with modifications which in the opinion of the Secretary of State make a substantial change in the proposals].

[The Secretary of State having considered representations duly made under section 13 of the 1992 Act, has determined to make the Order applied for with modifications.]

Notice of the Secretary of State’s determination was published in the London Gazette on [ ].

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10 to 13 and 15 to 17 of Schedule 1 to, the 1992 Act makes the following Order:—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

**1.** This Order may be cited as the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X] and comes into force on [ ] 201[X].

#### **Interpretation**

**2.**—(1) In this Order—

“the 1845 Act” means the Railways Clauses Consolidation Act 1845<sup>(c)</sup>;

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

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

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

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

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

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- (a) S.I. 2006/1466 as 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. 2015/627, S.I. 2017/979 and S.I. 2017/1070.
- (b) 1992 c. 42. Section 1 was amended by paragraphs 51 and 52 of Schedule 2 to the Planning Act 2008 (c. 29). Section 5 was amended by S.I. 2012/1659.
- (c) 1845 c. 20.
- (d) 1961 c. 33.
- (e) 1965 c. 56.
- (f) 1980 c. 66.
- (g) 1981 c. 66.
- (h) 1984 c. 27.

“the 1990 Act” means the Town and Country Planning Act 1990(a);

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

“the 2003 Act” means the Communications Act 2003 (c)

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

“authorised works” means the new railway and any other works authorised by this Order, or any part of them;

“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;

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

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

“the Company” means Rother Valley Railway Limited (Company number 02613553) whose registered office is at 3-4 Bower Terrace, Tonbridge Road, Maidstone, Kent, ME16 8RY;

“electronic transmission” means a communication transmitted—

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

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

“the existing railways” means the railways specified in Part 2 of Schedule 1 (the Railway) together with all lands and works relating to the existing railways vested in the Company at the date this Order is made and held or used by the Company for the purposes of its railway undertaking;

“footpath” and “footway” have the same meanings as in the 1980 Act;

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

“KESR” means the Kent and East Sussex Railway Company Limited, a charitable company limited by guarantee (Registered charity no. 262481) of Tenterden Town Station, Station Road, Tenterden, Kent, TN30 6HE;

“limits of land to be acquired or used” means the limits of land to be acquired or used shown on the Order plans;

“limits of deviation” means the limits of deviation for the Railway shown on the Order plans;

“limits of land for survey and investigation” means the limits of land of which entry may be taken for survey and investigation shown on the Order plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and

“maintenance” is to be construed accordingly;

“the new railway” means the railway specified in Part 1 of Schedule 1 together with all lands and works relating to that railway;

“Order land” means the land shown on the Order plans which is within the Order limits and described in the book of reference;

“Order limits” means the limits of deviation and the limits of land to be acquired or used as shown on the Order plans;

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

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

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

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(a) 1990 c. 8.  
(b) 1991 c. 22. As amended by the Traffic Management Act 2004 c. 18.  
(c) 2003 c. 21

“the railway” means the new railway and the existing railways;

“road hump” has the same meaning as in the 1980 Act<sup>(b)</sup>;

“statutory undertaker” means—

(a) any person who is a statutory undertaker for any of the purposes of the 1990 Act; and

(b) any public communications provider within the meaning of section 151(1) of the 2003 Act<sup>(c)</sup>;

“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; and

“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) References in this Order to numbered plots are references to plot numbers on the Order plans.

(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on an authorised work are taken to be measured along that work.

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

### **Application of other railway legislation, etc.**

**3.—**(1) (The following provisions of the 1845 Act are incorporated in this Order—

section 58<sup>(d)</sup> (company to repair roads used by them), except for the words from “and if any question” to the end;

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 75 (omission to fasten gates);

section 77 (presumption that minerals excepted from acquisition of land);

sections 78 to 83, 85 to 85E<sup>(e)</sup> and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923<sup>(f)</sup>;

section 103<sup>(g)</sup> (refusal to quit carriage at destination);

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(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(b) The definition of “road hump” was inserted by section 32 of, and paragraph 1 of Schedule 6 to, the Transport Act 1981 (c. 56).

(c) 2003 c. 21.

(d) There are amendments to section 58 that are not relevant to this Order.

(e) Section 79A was amended by section 48(1)(c) of the Coal Industry Nationalisation Act 1946 (c. 59). Section 85C was amended by virtue of section 17(2)(a) of the Interpretation Act 1978 (c. 30).

(f) 1923 c. 20.

(g) Section 103 was amended by the Statute Law Revision Act 1892 (c. 19), Part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1892 (c. 48).

section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”; and  
section 145(a) (recovery of penalties).

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

“the company” means the Company;

“goods” includes anything conveyed on the railway;

“lease” includes an agreement for a lease;

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

“the railway” means the new railway authorised to be constructed by this Order, the existing railways and any other authorised work;

“the special Act” means this Order; and

“toll” includes any rate or charge or other payment payable under this enactment or any other enactment for any passenger or goods conveyed on any railway authorised to be constructed by this Order.

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

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

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

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by the Company under the powers conferred by article 12 (temporary stopping up of streets) and the carrying out of works under article 10 (power to execute street works) whether or not the stopping up, alteration or diversion, or the carrying out of such works, constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act(c) referred to in paragraph (2) are—

section 54(d) (advance notice of certain works), subject to paragraph (4);

section 55(e) (notice of starting date of works), subject to paragraph (4);

section 59(f) (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

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- (a) Section 145 was amended by the Statute Law Revision Act 1892 (c. 19) and Part 2 of Schedule 12 to the Transport Act 1962 (c. 46).
  - (b) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c.51) and section 168(2) of, and Schedule 9 to, the New Road and Street Works Act 1991 (c. 22).
  - (c) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
  - (d) As also amended by section 49(1) of the Traffic Management Act 2004.
  - (e) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
  - (f) As amended by section 42 of the Traffic Management Act 2004 (c.18)

section 76 (liability for cost of temporary traffic regulation);

section 77 (liability for cost of use of alternative route); and

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

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (2) have effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

### **Disapplication of legislative provisions**

**5.**—(1) The following provisions do not apply in relation to any works executed under the powers conferred by this Order—

- (a) Regulation 12(1)(a) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016<sup>(a)</sup> in relation to the carrying out of a relevant flood risk activity;
- (b) section 23 (prohibition on obstacles etc. in watercourses) of the Land Drainage Act 1991<sup>(b)</sup>; and
- (c) the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of the Land Drainage Act 1991, which require consent or approval for the carrying out of the works.

(2) (In this article, “flood risk activity” means an activity described in paragraph 3(1)(a), (b) or (c) of Schedule 25 (flood risk activities and excluded flood risk activities) to the Environmental Permitting (England and Wales) Regulations 2016.

## **PART 2**

### **WORKS PROVISIONS**

#### *Principal powers*

#### **Power to construct new railway**

**6.**—(1) The Company may construct and maintain the new railway.

(2) Subject to article 8 (power to deviate) the new railway may only be constructed in the lines or situations shown on the Order plans and in accordance with the levels shown on the Order sections.

(3) Subject to paragraph (5), the Company 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 new railway, namely—

- (a) electrical equipment and signalling works;
- (b) ramps, means of access, a passing loop, and a halt at Salehurst;
- (c) embankments, viaducts, aprons, abutments, retaining walls, wing walls, bridges, drainage and culverts;
- (d) works to install or alter the position of apparatus, including mains, sewers, drains and cables;
- (e) temporary works in the river Rother in connection with the construction of the new railway;
- (f) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;

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

<sup>(b)</sup> 1991 c. 59

- (g) extension and strengthening of the wall to the north of the river Rother at Robertsbridge between points X and Y on the Order plans.

(4) Subject to paragraph (5), the Company may carry out and maintain 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 new railway, other than works that would interfere with a navigable watercourse.

(5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on—

- (a) land specified in columns (1) and (2) of Schedule 2 (acquisition of land for ancillary works) for the purpose specified in column (3) of that Schedule; or
- (b) land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule.

(6) The Company may, within the Order limits—

- (a) carry out and maintain landscaping, ecological and other works to mitigate any adverse effects of the construction, maintenance and operation of the authorised works (other than works authorised by this paragraph); and
- (b) carry out and maintain works for the benefit or protection of land affected by the authorised works (other than works authorised by this paragraph).

#### **Power to maintain existing railways**

7. With effect from the date of this Order, the Company may maintain the existing railways in the lines and situations, and within the limits of deviation, shown on the Order plans, and in accordance with the levels shown on the Order sections.

#### **Power to deviate**

8. In constructing or maintaining the railway, the Company may—

- (a) deviate laterally from the lines or situations shown on the Order plans to the extent of the limits of deviation for that railway; and
- (b) deviate vertically from the levels shown on the Order sections—
  - (i) to any extent not exceeding 1.5 metres upwards; or
  - (ii) to any extent downwards as may be found to be necessary or convenient.

*Streets*

#### **Power to alter layout etc. of streets**

9.—(1) Subject to paragraph (2), the Company may, for the purposes of constructing and maintaining any authorised work, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, the Company may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) temporarily remove any road hump within the street.

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

(3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(4) If within 28 days of receiving an application for consent under paragraph (3) a street authority fails to notify the Company of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

### **Power to execute street works**

**10.**—(1) The Company may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) This article is subject to paragraph (3) of Schedule 6 (provisions relating to statutory undertakers, etc.).

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

### **Stopping up of street**

**11.**—(1) Subject to the provisions of this article the Company may, in connection with the carrying out of the authorised works, stop up Footpath S&R 31 between points P1 and P2 on sheet 3 of the Order plans.

(2) The street referred to in paragraph (1) is not to be wholly or partly stopped up under this article unless—

- (a) a new street has been constructed and substituted for it between points P1, P4 and P2 on sheet 3 of the Order plans to the reasonable satisfaction of the street authority and is open to use; or
- (b) a temporary alternative route for the passage of such persons as could have used the street to be stopped up is first provided and subsequently maintained by the Company, to the reasonable satisfaction of the street authority, between points P1, P3, P2 and P5 on the Order plans until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where Footpath S&R 31 has been stopped up under this article—

- (a) all rights of way over or along it are extinguished; and
- (b) the Company may appropriate and use for the purposes of its railway undertaking so much of the site of the street as is bounded on both sides by land owned by the Company.

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

(5) This article is subject to paragraph 2 of Schedule 6 (provisions relating to statutory undertakers etc.) to this Order.

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

**12.**—(1) The Company, during and for the purposes of the execution 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 (3), prevent all persons from passing along the street.



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

(3) Without limitation on the scope of paragraph (1), the Company may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the Order plans, in column (3) of that Schedule.

(4) The Company 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.

(6) If within 28 days of receiving an application for consent under paragraph (4)(b) a street authority fails to notify the Company of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

#### **Access to works**

**13.—**(1) The Company may, for the purposes of, or in consequence of, the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the locations marked A1 and A2 on sheet 3 of the Order plans; and
- (b) with the approval of 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 Company reasonably requires for the purposes of the authorised works.

(2) If a highway authority fails to notify the Company of its decision within 28 days of receiving an application for approval under paragraph (1), that highway authority will be deemed to have granted approval.

#### **Agreements with street authorities**

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

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (c) the execution in the street of any of the works referred to in article 10 (power to execute street works).

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

#### **Level crossings**

**15.—**(1) The Company may construct the new railway so as to carry it on the level across the highways specified in Part 1 of Schedule 5 (level crossings).

(2) The Company may provide, maintain and operate at or near the level crossings referred to in paragraph (1) above such barriers or other protective equipment as the Secretary of State may approve in writing or as may be required through an Order under the Level Crossings Act 1983(a).

(3) The Company may in the exercise of the powers conferred by this article alter the level of any highway specified in Schedule 5.

(4) The highway authority and the Company may enter into agreements with respect to the construction and maintenance of any level crossing; and such agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(5) Any traffic sign placed pursuant to this article on or near a highway or other road to which the public has access will be treated for the purposes of section 64(4) of the 1984 Act as having been placed as provided by that Act.

(6) The following enactments will not apply to any level crossing authorised by this Order —

(a) the Highway (Railway Crossings) Act 1839(b); and

(b) section 9 of the Railway Regulation Act 1842(c).

(7) In this article—

“barrier” includes gate;

“level crossing” means the place at which the railway crosses a highway on the level under the powers conferred by this article; and

“protective equipment” includes lights, traffic signs (within section 64(1) of the 1984 Act), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

#### *Supplemental powers*

### **Discharge of water**

**16.—**(1) The Company may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works 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 Company under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(d).

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

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The Company must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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

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(a) 1983 c.16

(b) 1839 c. 45.

(c) 1842 c. 55

(d) 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43), sections 36(2) and 99 of the Water Act 2003 (c.37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c.29).

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

(8) If a person who receives an application for consent or approval fails to notify the Company of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(9) In this article—

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

### **Power to survey and investigate land**

**17.—**(1) The Company may for the purpose of this Order—

- (a) survey or investigate any land shown within the Order limits and limits of land for survey and investigation;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the Company thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
- (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; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days’ notice has been served on every owner and occupier of the land.

(3) Notice given in accordance with paragraph (2) must include—

- (a) a statement of the recipient’s rights under paragraph (15); and
- (b) a copy of any warrant issued under paragraph (8).

(4) If the Company proposes to do any of the following, the notice must include details of what is proposed—

- (a) searching, boring or excavating;
- (b) leaving apparatus on the land;
- (c) taking samples;
- (d) an aerial survey;
- (e) carrying out any other activities that may be required to facilitate compliance with the instruments mentioned in paragraph (5).

(5) The instruments mentioned in paragraph (4)(e) are—

- (a) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of effects of certain public and private projects on the environment(b); or

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(a) S.I. 2016/1154

(b) O.J. No. L26, 28.1.2012, p1.

(b) Council Directive 92/42/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora<sup>(a)</sup>.

(6) If the Company obtains a warrant after giving notice in accordance with paragraph (2) it must give a copy of the warrant to all those to whom it gave that notice.

(7) Any person entering land under this article on behalf of the Company —

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph (8);
- (b) may not use force unless a justice of the peace has issued a warrant under paragraph (8) authorising the person to do so;
- (c) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes;
- (d) may only enter and survey at a reasonable time; and
- (e) must, if the land is unoccupied or the occupier is absent from the land when the person enters it, leave it as secure against trespassers as when the person entered it.

(8) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

- (a) that another person has prevented or is likely to prevent the exercise of that power, and
- (b) that it is reasonable to use force in the exercise of that power.

(9) The force that may be authorised by a warrant is limited to that which is reasonably necessary.

(10) A warrant authorising the person to use force must specify the number of occasions on which the Company can rely on the warrant when entering and surveying or valuing land.

(11) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

(12) Any evidence in proceedings for a warrant under this article must be given on oath.

(13) No trial holes are to be made under this article—

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

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

(15) If either a highway authority or a street authority which receives an application for consent fails to notify the Company of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (13)(a) in the case of a highway authority; or
- (b) under paragraph (13)(b) in the case of a street authority,

that authority is deemed to have granted consent.

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(a) O.J. No. L206, 22.7.1992, p.7.

**PART 3**  
**ACQUISITION AND POSSESSION OF LAND**  
*Powers of acquisition*

**Power to acquire land**

**18.**—(1) The Company may acquire compulsorily—

- (a) so much of the land shown on the Order plans as lying within the limits of deviation 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 land for ancillary works) (being land shown on the land plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule

and may use any land so acquired for those purposes, or for any other purposes that are ancillary to its railway undertaking as existing from time to time.

(2) This article is subject to paragraph (8) of article 22 (temporary use of land for construction of works).

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

**19.**—(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(a) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act as so applied 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)(b) (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 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 26 (time limit for exercise of powers of acquisition) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X].”

(5) In section 11(1B)(c) (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(d) (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 26 of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X](e)”.

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(a) 1981 c. 67.

(b) Subsection (1) of section 11A was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(c) Subsection (1B) of section 11 was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.

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

(e) S.I. 201[X]/XXXX

- (8) In Schedule 2A(a) (counter-notice requiring purchase of land not in notice to treat)—
  - (a) for paragraphs 1(2) and 14(2) substitute—
  - (b) “(2) But see article 21 (power to acquire air-space) only of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X], which excludes the acquisition of airspace only from this Schedule”; and
  - (c) after paragraph 29 insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under articles 22 (temporary use of land for construction of works) and 23 (temporary use of land for maintenance of works) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X].”

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

- 20.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (4) Omit sections 5A(b) (time limit for general vesting declaration).
- (5) In section 5B(c) (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 26 (time limit for exercise of powers of acquisition) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X]”.
- (6) In section 6(d) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to the Acquisition of Land Act 1981” substitute “section 14A of the Transport and Works Act 1992”.
- (7) In section 7(e) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (8) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- (9) “(2) But see article 21 (power to acquire air-space only) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 201[X], which excludes the acquisition of airspace only from this Schedule”
- (10) References to the 1965 Act in the 1981 Act are construed as references to that Act as applied to the acquisition of land under article 18 (power to acquire land) by article 19 (application of Part 1 of the 1965 Act).

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- (a) Schedule 2A was inserted by paragraph 3 of Schedule 3 to the Housing and Planning Act 2016 (c. 22).
  - (b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.
  - (c) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016.
  - (d) Section 6 was 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 (c.22).
  - (e) Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.
  - (f) Schedule A1 was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

### **Power to acquire airspace only**

**21.**—(1) The Company may acquire compulsorily so much of, or such rights in, the air-space over the land referred to in paragraph (1)(a) or (b) of article 18 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the Company acquires any part of, or rights in, the air-space over land under paragraph (1), the Company is not required to acquire an interest in any other part of the land.

### *Temporary possession of land*

### **Temporary use of land for construction of works**

**22.**—(1) The Company may, in connection with the carrying out of the authorised works—

- (a) enter on and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule; and
  - (ii) subject to paragraph (11), any other Order land in respect of which no notice of entry has been served under section 11(a) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(b) (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 7 or any mitigation works on that land.

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

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

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 7; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of this land was taken unless the Company has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.

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

- (a) restore the existing pond within plot 76;

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(a) 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.

(b) Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016.

(b) replace a building removed under this article; or

(c) restore the land on which any works have been constructed under paragraph (1)(d).

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

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

(7) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(a) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a)(i).

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

(10) Section 13(b) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 19 (application of Part 1 of the 1965 Act).

(11) Paragraph (1)(a)(ii) does not authorise the Company to take temporary possession of any land which it is not authorised to acquire under article 19 (power to acquire land).

### **Temporary use of land for maintenance of works**

**23.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to the new railway, the Company may—

(a) enter upon and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the railway or any ancillary works connected with it; and

(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

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

(4) The Company may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of works 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 Company must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

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(a) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(b) Section 13 was amended by sections 62(3) and 139 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).



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

(8) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 19 (application of Part 1 of the 1965 Act).

(11) In this article "the maintenance period" in relation to the new railway means the period of 5 years beginning with the date on which it is opened for use.

#### *Compensation*

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

**24.**—(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;
- (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 he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

#### *Supplementary*

### **Extinction or suspension of private rights of way**

**25.**—(1) Subject to paragraph (5), 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 Company, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Company under section 11(1) (a) of the 1965 Act,

whichever is the sooner.

(2) Subject to paragraph (5), all private rights of way over land owned by the Company which, being within the limits of land which may be acquired shown on the Order plans, is required for the purposes of this Order are extinguished on the appropriation of the land for any of those purposes by the Company.

(3) Subject to paragraph (5), all private rights of way over land of which the Company takes temporary possession under this Order are suspended and unenforceable for as long as the Company remains in lawful possession of the land.

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(a) 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) Measures 2006, 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

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

(5) This article does not apply in relation to any right of way to which section 271 or 272(a) of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 6 (provisions relating to statutory undertakers etc.) applies.

(6) Paragraphs (1), (2), (3) and (4) have effect subject to—

(a) any notice given by the Company before—

- (i) completion of the acquisition of;
  - (ii) the Company's appropriation of;
  - (iii) the Company's entry onto; or
  - (iv) the Company's taking temporary possession of,
- the land, that any or all of those paragraphs do not apply to any right of way specified in the notice; and

(b) any agreement made (whether before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of this Order) which makes reference to this article between the Company and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is mentioned in sub-paragraph (6)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, 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**

**26.**—(1) After the end of the period of 5 years beginning on the day on which the 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 19 (application of part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 20 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(b).

(2) The powers conferred by article 22 (temporary use of land for construction of works) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the Company remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

## **PART 4**

### **MISCELLANEOUS AND GENERAL**

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

**27.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(c) in relation to a nuisance falling within paragraph (g) of section 79(1)(d) (noise emitted from premises so as to be

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

(b) 1981 c. 66.

(c) 1990 c.43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

(d) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the

prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows

- (a) that the nuisance relates to premises used by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the authorised works and that the nuisance is attributable to the carrying out of the authorised works in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61(a) (prior consent for work on construction sites) of the Control of Pollution Act 1974(b); or
- (b) that the nuisance is a consequence of the operation of the railway and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

### **Power to lop trees overhanging the authorised works**

**28.**—(1) The Company may fell or lop any tree or shrub near any part of the authorised works, 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 works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers conferred by paragraph (1), the Company must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

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

### **Power to operate and use railway**

**29.**—(1) The Company may operate and use the railway and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

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

### **Power to transfer undertaking**

**30.**—(1) The Company may—

- (a) transfer to KESR its right to construct, maintain, use or operate the railway, including the authorised works (or any part of them), and such related statutory rights as may be agreed between the Company and KESR; or
- (b) grant to KESR for a period agreed between the Company and KESR the right to construct, maintain, use or operate the railway, including the authorised works (or any part of them) and such related statutory rights as may be so agreed;

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Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

(a) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(b) 1974 c.40

(c) 1993 C. 43 As amended by the Transport Act 2000 (c.38) and the Railways Act 2005 (c.14).

on such terms as may be agreed between the Company and KESR.

(2) The Company may, with the consent of the Secretary of State—

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

(3) Where an agreement has been made by virtue of paragraphs (1) or (2) references in this Order to the Company include references to KESR or to the transferee or the lessee, as the case may be.

(4) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraphs (1) or (2) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Company.

(5) Upon any transfer or grant to KESR in accordance with paragraph (1), any bye-laws of KESR are to apply to the railway as they apply to the existing railway undertaking of KESR.

### **Power to charge fares**

**31.** The Company may demand, take and recover or waive such charges for carrying passengers or goods on the railway, or for any other services or facilities provided in connection with the operation of the railway, as it thinks fit.

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

**32.** This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the railway or the right to operate the same; and
- (b) any agreement entered into by the Company with any person for the construction, maintenance, use or operation of the railway, 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 is to be taken to prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law is to apply in relation to the rights and obligations of the parties to any lease granted by or under any 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.

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

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

- (a) obstructs any person acting under the authority of the Company in setting out the lines of the new railway 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 Company,

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

### **Removal of obstructions**

**34.**—(1) If any obstruction is caused to trains using the railway by a vehicle waiting, unloading, or breaking down on any part of the railway, the person in charge of the vehicle must immediately remove it and if that person fails to do so, the Company may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

- (a) any person by whom the vehicle was put or left so as to become an obstruction to trains, or
- (b) any person who was the owner of the vehicle at that time and who does not demonstrate that the vehicle was so put or left without the owner's knowledge or consent.

(2) If any obstruction is caused to trains using the railway by a load falling onto the railway from a vehicle, the person in charge of the vehicle must immediately remove the load from the railway, and if that person fails to do so, the Company may take all reasonable steps to remove the load and may recover the expenses reasonably incurred in doing so from—

- (a) any person who was in charge of the vehicle at the time the load fell from it; or
- (b) any person who was the owner of the vehicle at that time and who does not demonstrate that the vehicle was in the place at which the load fell from it without the owner's knowledge or consent.

(3) For the purposes of this article the owner of a vehicle is the person by whom the vehicle is kept and in determining for those purposes who was the owner of a vehicle at any time, it will be presumed, unless the contrary appears, that the owner was the person in whose name the vehicle was at that time registered under the Vehicle Excise and Registration Act 1994(a).

### **Trespass**

**35.**—(1) Any person who—

- (a) trespasses on any part of the railway; or
- (b) trespasses on any land of the Company 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.

### **Saving for highway authorities**

**36.** Nothing in this Order affects any power of a highway authority to widen, alter, divert or improve any highway along which the railway is laid.

### **Statutory undertakers etc.**

**37.** The provisions of Schedule 6 (provisions relating to statutory undertakers etc.) have effect.

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(a) 1994 c. 22.

## **Certification of plans etc.**

**38.** The Company must, as soon as practicable after the making of this Order, submit copies of the book of reference, the Order sections and the Order plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, Order sections and Order plans 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**

**39.—**(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(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

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

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled 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 part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

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(a) 1978 c.30.

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

### **Protection of interests**

**40.** Schedule 8 (protective provisions) has effect.

### **No double recovery**

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

### **Arbitration**

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

### **Agreement between BRB (Residuary) Limited and Rother Valley Railway Limited**

**43.—**(1) Upon the coming into force of this Order—

- (a) the Company shall, to the exclusion of the owner, be subject to all obligations statutory or otherwise relating to the railway line and the bridges and the airspace beneath them comprised in Railway No. 2 and referred to as plots 1 to 5 on the Order plans or any one of them (insofar as those obligations are still subsisting and capable of taking effect) to the intent that the owner shall be released from all such obligations; and
- (b) the agreement made between BRB (Residuary) Limited and Rother Valley Railway Limited and dated 12 September 2007 shall terminate with immediate effect such that its terms may not be enforced.

(2) In this article, "the owner" means the Secretary of State for Transport or the Highways England Historic Railways Estate in its capacity as manager of the Historical Railways Estate, as defined by the Public Bodies (Abolition of BRB (Residuary) Limited Order 2013(a)).

### **Crown Land**

**44.—** (1) Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and, in particular, nothing in this Order authorises the Company or any other person to take, use, enter upon or in any manner interfere with any land, hereditament or rights of whatsoever description belonging to a government department without the consent in writing of that government department.

(2) Consent under this article may be given unconditionally or subject to such terms and conditions as may be considered necessary or appropriate.

Signed by authority of the Secretary of State

Date

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

## SCHEDULES

### SCHEDULE 1 THE RAILWAY

Articles 8 and 9

#### PART 1 THE NEW RAILWAY

##### **In the county of East Sussex—**

Railway No. 3— A railway 3421 metres in length, commencing at a junction with Railway No. 2 on the western side of Northbridge Street and terminating at a junction with Railway No. 1 on the eastern side of the B2244 Road.

#### PART 2 THE EXISTING RAILWAYS

##### **In the county of East Sussex—**

Railway No.1— A railway 1165 metres in length, commencing at a junction with Railway No. 3 at its termination and terminating at its junction with the Kent and East Sussex Railway 225 metres west of Bodiam Station.

Railway No. 2— A railway 814 metres in length, commencing at a point 20 metres north of Station Road and terminating at its junction with Railway No. 3 on the western side of Northbridge Street.

### SCHEDULE 2 ACQUISITION OF LAND FOR ANCILLARY WORKS

Articles 6 and 18

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land on land plans</i>	<i>(3)</i> <i>Purposes for which land may be acquired</i>
County of East Sussex District of Rother	98	Provision of environmental mitigation works

### SCHEDULE 3 STREETS SUBJECT TO STREET WORKS

Article 10

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
County of East Sussex District of Rother	Northbridge Street
County of East Sussex	A21 London Road



District of Rother	
County of East Sussex District of Rother	B2244 Junction Road
County of East Sussex District of Rother	Footpath S&R 31
County of East Sussex District of Rother	Bridleway S&R 36b

## SCHEDULE 4

Article 12

### 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 East Sussex District of Rother	Northbridge Street/The Clappers	Between T1 and T2
County of East Sussex District of Rother	A21 London Road	Between T3 and T4
County of East Sussex District of Rother	Bridleway S&R 36b	Between points T5, T7 and T6
County of East Sussex District of Rother	B2244 Junction Road	Between points T8 and T9

## SCHEDULE 5

Article 15

### LEVEL CROSSINGS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road</i>
County of East Sussex District of Rother	Northbridge Street
County of East Sussex District of Rother	A21 London Road
County of East Sussex District of Rother	Bridleway S&R 36b
County of East Sussex District of Rother	B2244 Junction Road

## SCHEDULE 6

Article 10 and 37

### PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

1.—(1) Sections 271 to 274(a) (extinguishment of rights of statutory undertakers etc.) of the 1990 Act apply in relation to any land acquired or appropriated by the Company under this Order subject to the following provisions of this paragraph: 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 on the extinguishment of any rights under sections 271 and 272, and

(a) Section 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

sections 279(2) to (4), 280 and 282(a), which provide for the payment of compensation) have effect accordingly.

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

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the Company 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.

(4) Sub-paragraph (3) does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

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

is entitled to recover from the Company 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.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which paragraph 2, or Part 3 of the 1991 Act, applies.

(6) In this paragraph—

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

“public utility undertakers” has the same meaning as in the Highways Act 1980(c).

*Apparatus of statutory undertakers etc. in stopped up streets*

**2.—**(1) Where a street is stopped up under article 11 (stopping up of street) any statutory utility whose apparatus is under, in, upon, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 11, any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by the Company must—

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

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

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

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(a) Section 279(3) was amended by paragraph 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.

(b) 2003 c. 21.

(c) 1980 c. 66

(4) If in the course of the execution of relocation works under sub-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 Company, 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 sub-paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of sub-paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint or cable is agreed, or is determined to be necessary, the consequential provisions of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Sub-paragraphs (3) to (6) do not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the Company and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this paragraph—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

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

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in paragraph 1(6).

## SCHEDULE 7

Article 22

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Area</i>	(2) <i>Number of land shown on the deposited plans</i>	(3) <i>Purpose for which temporary possession may be taken</i>	(4) <i>Relevant part of the authorised works</i>
County of East Sussex District of Rother	16, 45, 56, 104, 107, 108, 122, 123	Worksite and access for construction of the authorised works	Construction of new railway
County of East Sussex	22, 23, 28, 38, 46, 47	Worksite and access	Construction of new

District of Rother		for construction of authorised works	railway
County of East Sussex District of Rother	67	Worksite and provision of farm access over existing drain	Construction of new railway
County of East Sussex District of Rother	69, 70	Worksite and provision of mounting blocks	Construction of new railway
County of East Sussex District of Rother	87, 93, 109	Provision of farm access	Mitigation works

## SCHEDULE 8

### PROTECTIVE PROVISIONS

Article 40

#### PART 1

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

**1.** For the protection of the undertakers referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the Company and the undertaker concerned, have effect.

**2.** The provisions of paragraph 1 of Schedule 6 (provisions relating to statutory undertakers etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

**3.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

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(a) 1989 c. 29.

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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

4. This Part of this Schedule does not apply to apparatus in respect of which the relations between the Company and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

5. Regardless of any provision in this Order or anything shown on the land plans, the Company must not acquire any apparatus otherwise than by agreement.

6.—(1) If in the exercise of the powers conferred by this Order, the Company acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the Company requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the Company must, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the Company and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the Company, or the Company is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question must, on receipt of a written notice to that effect from the Company, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the Company under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Company or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the Company to be removed under the provisions of this Part of this Schedule.

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(a) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(6) Regardless of anything in sub-paragraph (5), if the Company gives notice in writing to the undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the Company, that work, instead of being executed by the undertaker, must be executed by the Company without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) authorises the Company to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**7.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the Company affords to an undertaker facilities and rights for the construction and maintenance in land of the Company of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the Company and the undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of the Company, the arbitrator must—

- (a) give effect to all reasonable requirements of the Company for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Company or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the Company in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the Company to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**8.—**(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the Company under paragraph 5(2), the Company must submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the Company, reasonably requires the removal of any apparatus and gives written notice to the Company of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the Company under paragraph 5(2).

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

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

**9.**—(1) Subject to the following provisions of this paragraph, the Company must repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the Company must—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the Company with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

(3) An undertaker must give the Company reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the Company which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**12.**—(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between the Company and the operator, have effect.

(2) In this Part of this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act<sup>(a)</sup>;

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

**13.**—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised works or their construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or

(b) there is any interruption in the supply of the service provided by an operator,

the Company must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—

(i) make reasonable compensation to an operator for loss sustained by it; and

(ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

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<sup>(a)</sup> See section 106.



(2) Nothing in sub-paragraph (1) imposes any liability on the Company with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the Company reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of the Company which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the Company and the operator under this paragraph is to be referred to and settled by arbitration under article 42 (arbitration).

**14.** This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the Company and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

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

### **PART 3**

#### **FOR THE PROTECTION OF DRAINAGE AUTHORITIES AND THE ENVIRONMENT AGENCY**

**16.—**(1) The following provisions of this Part of this Schedule apply for the protection of the drainage authority unless otherwise agreed in writing between the Company and the drainage authority.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“a category 1 specified work” means so much of any permanent or temporary work or operation authorised by this Order (which includes, for the avoidance of doubt, any dredging and any any geotechnical investigations that may be undertaken) as consists of—

- (a) erecting any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect any drainage work which is or includes a main river or the volumetric rate of flow of water in or flowing to or from any main river;
- (b) the carrying out of any work of alteration or repair of any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect the flow of water in the main river or to affect any drainage work;
- (c) erecting or altering any structure (whether temporary or permanent) designed to contain or divert the floodwaters of any part of a main river;
- (d) any work or operation that is in, on, under, over or within 8 metres of a drainage work which is or includes a main river or is otherwise likely to affect any such drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (e) any work likely to affect the flow, purity or quality of water in any watercourse or other surface waters or groundwater; or
- (f) any work or operation likely to cause obstruction to the free passage of fish or damage to any fishery.

“a category 2 specified work” means any of the following—

- (a) erecting any mill dam, weir or other like obstruction to the flow of any ordinary watercourse, or raising or otherwise altering any such obstruction;
- (b) erecting a culvert in any ordinary watercourse;

(c) altering a culvert in a manner that would be likely to affect the flow of any ordinary watercourse; or

(d) altering, removing or replacing a structure or feature designated by a local drainage authority under Schedule 1 to the Flood and Water Management Act 2010(a);

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” are construed accordingly;

“the drainage authority” means—

(a) in relation to a category 1 specified work, the Agency;

(b) in relation to a category 2 specified work, the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(b).

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“the fishery” means any waters containing fish and the spawn, habitat or food of such fish;

“a main river” and “ordinary watercourse” have the meanings given by respectively the Water Resources Act 1991(c) and the Land Drainage Act 1991;

“plans” includes but is not limited to sections, drawings, specifications and method statements;

“specified work” means a category 1 specified work or a category 2 specified work.—

**17.**—(1) Before beginning to construct any specified work, the Company must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 27.

(3) Any approval of the drainage authority required under this paragraph—

(a) must not be unreasonably withheld;

(b) is deemed to have been [refused/given] if it is neither given nor refused within 2 months of the receipt of the plans for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, fishery, aquatic wildlife, water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The drainage authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

**18.** Without limitation on the scope of paragraph 17, the requirements which the drainage authority may make under that paragraph include conditions requiring the Company at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of any specified work;

(c) to provide environmental protection for aquatic wildlife.

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(a) 2010 c. 29

(b) 1991 c. 59

(c) 1991 c. 57

**19.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 18, must be constructed—

- (a) without unnecessary delay in accordance with the plans approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The Company must give to the drainage authority not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice in writing require the Company at the Company's own expense to comply with the requirements of this Part of this Schedule or (if the Company so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 23, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Company, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the Company.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

(6) If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the Company must provide such alternative means of access to allow the Agency to maintain the flood defence or use the equipment no less effectively than before the obstruction.

**20.**—(1) Subject to sub-paragraph (5) the Company must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the Company for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the Company is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the Company to repair and restore the work, or any part of such work, or (if the Company so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to paragraph 23, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the Company, the Company has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of an emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not precluded by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

**21.** Subject to paragraph 23, if by reason of the construction of any protective works or specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the Company to the reasonable satisfaction of the drainage authority and if the Company fails to do so, the drainage authority may make good the same and recover from the Company the expense reasonably incurred by it in so doing.

**22.**—(1) The Company must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Company requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 23, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Company fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Company the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 23, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Company the reasonable cost of so doing provided that notice specifying those steps is served on the Company as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**23.** Nothing in paragraphs 19(4), 20(3), 21, 22(3) and (4) authorises the drainage authority to execute works on or affecting an operational railway forming part of the Company's undertaking without the prior consent in writing of the Company such consent not to be unreasonably withheld or delayed.

**24.** The Company must indemnify the drainage authority in respect of all costs, charges and expenses which the drainage authority may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the drainage authority under this Part of this Schedule.

**25.**—(1) Without affecting the other provisions of this Part of this Schedule, the Company must indemnify the drainage authority from all claims, demands, proceedings, costs, charges, penalties, damages, expenses and losses, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands,
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater; or
- (f) any damage to aquatic wildlife;

which is caused by the construction of any of the specified works and protective works or any act or omission of the Company, its contractors, agents or employees whilst engaged upon the work.

(2) The drainage authority must give to the Company reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the Company which agreement must not be unreasonably withheld or delayed.

**26.** The fact that any work or thing has been executed or done by the Company in accordance with plans approved by the drainage authority, or to the drainage authority's satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the Company from any liability under the provisions of this Part of this Schedule.

**27.** Any dispute arising between the Company and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 42 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the Company or the drainage authority, after notice in writing by one to the other.

## PART 4

### FOR THE PROTECTION OF HIGHWAYS ENGLAND

#### **Application**

**28.**—(1) The provisions of this Part of this Schedule apply to the HE works and have effect unless otherwise agreed in writing between the Company and Highways England.

(2) Highways England must act reasonably and in good faith when considering any request for approval pursuant to these protective provisions and when negotiating any agreement, strategy or other arrangement referred to in or otherwise contemplated by these provisions or subsequent iteration of such agreement, strategy or arrangement.

#### **Interpretation**

**29.**—(1) Where the terms defined in article 2 of this Order are inconsistent with subparagraph (2) below the latter prevail.

(2) In this Schedule—

“as built information” means one electronic copy of the following information—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the Company; in compliance with DMRB GG184 Standards for Highways or any successor document;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;

- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the Company and Highways England both acting reasonably;
- (k) the health and safety file; and
- (l) such other information as is reasonably required by Highways England to be used to update all relevant databases and to ensure compliance with Highways England's Asset Data Management Manual as is in operation at the relevant time.

“the bond sum” means the sum equal to 200% of the cost of the carrying out the HE works (to include all costs plus any commuted sum) or such other sum agreed between the Company and Highways England;

“the cash surety” means the sum agreed between the Company and Highways England once the Level Crossing Order relating to the A21 has been made as a surety for the purposes of paragraph 38 (security) of these provisions;

“commuted sum” means such sum calculated as provided for in paragraph 40 of this Part of this Schedule to be used to fund any additional future cost to Highways England of maintaining the trunk road arising as a result of the HE works;

“condition survey” means a survey of the condition of Highways England structures and assets within the Order limits or other structures and assets that in the reasonable opinion of HE may be affected by the HE works;

“contractor” means the contractor and any subcontractor appointed by the Company to carry out the HE works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“DLOA” means a detailed local operating agreement or other maintenance and repair strategy entered into by Highways England and the Company that will set out the agreed operational and communication protocols for the trunk road and define the obligations of the Company in relation to maintenance during both the construction phase of the HE works and following the issue of the final certificate, and will define those parts of the HE works that are within the railway corridor and/or comprise part of the level crossing and its associated infrastructure or assets that will fall to the Company to maintain following the issue of the final certificate and will include a dispute resolution provision based on paragraph 44 of this part of this Schedule;

“detailed design information” means only such of the following drawings specifications and calculations as are relevant to the development—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;

- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage Surveys – Standards for Highways;
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (w) regime of California Bearing Ratio testing;
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures and any required structural approval in principle;
- (l) landscaping;
- (m) proposed departures from DMRB standards;
- (n) walking, cycling and horse-riding assessment and review report;
- (o) utilities diversions;
- (p) topographical survey;
- (q) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (r) health and safety information including any asbestos survey required by DMRB GG105 Asbestos management or any successor document; and
- (s) other such information that may be reasonably required by Highways England to be used to inform the detailed design of the HE works,

“dilapidation survey” means a survey of the condition of the roads, bridges and retaining walls along the routes approved for construction traffic for the authorised works;

“DMRB” means the Design Management for Roads and Bridges published at <https://www.standardsforhighways.co.uk/dmr/> or any replacement or modification of it;

“final certificate” the certificate relating to those aspects of the HE works that have resulted in any alteration to the trunk road to be issued by Highways England pursuant to paragraph 36;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised works required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“HE works” means all the authorised works and associated works relating to the construction, maintenance and operation of a level crossing over the A21 at Robertsbridge, East Sussex and required by an Order made under the Level Crossing Act and any works by or on behalf of the Company that are in, on or under the trunk road or other Highways England land, including, without limitation, works to form or layout means of access to the trunk road and works to the trunk road highway drainage;

“nominated persons” means the Company’s representatives or the contractor’s representatives on site during the carrying out of the HE works as notified to Highways England from time to time;

“programme of works” means a document setting out the sequence and timetabling of the HE works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the HE works that have resulted in any alteration to the trunk road to be issued by Highways England in accordance with paragraph 34 when it considers the HE works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard GG119 or any replacement or modification of it;

“RSA actions” means those actions identified in the RSA decision log;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by Highways England and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the trunk road network;

“trunk road” means the A21 trunk road near Robertsbridge, East Sussex, at the location of the proposed level crossing forming part of the HE works; and

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991;

“walking, cycling and horse-riding assessment and review process” means the process set out in the walking, cycling and horse-riding assessment and review standard;

“walking, cycling and horse-riding assessment and review standard” means DMRB standard GG142 or any replacement or modification of it.

### **Prior Approvals and Security**

**30A.** In the event that HE reasonably requires, or the Company reasonably considers that the implementation of the Order requires, the carrying out of works of improvement to the trunk road that are outside of the Order Limits, the parties must enter into an agreement to provide for the carrying out of those works and the Company must be responsible for the costs of such works, including the costs of Highways England incurred in connection with the agreement and its implementation.

**30.—(1)** The HE works must not commence until:

(a) stage 1 and a stage 2 road safety audit processes have been completed in full accordance with the road safety audit standard;

(b) the programme of works has been approved by Highways England;

(c) the detailed design of the HE works comprising of the following details, insofar as considered relevant by Highways England has been submitted to and approved by Highways England:-

(i) the detailed design information, incorporating the RSA actions;

(ii) details of the proposed road space bookings;

(iii) a scheme of traffic management;



- (iv) the identity of the contractor and nominated persons;
- (v) a process for stakeholder liaison, with key stakeholders to be identified and agreed between Highways England and the Company, both acting reasonably;
- (vi) the walking, cycling and horse-riding assessment and review process appropriate to the completion of detailed design has been completed; and
- (d) in the event that Highways England considers that an amendment to the speed limit in the vicinity of the level crossing or other measures under the Road Traffic Regulation Act 1984 are reasonably necessary to secure the safety and efficiency of the A21, that a Road Traffic Regulation Order has been made to give force to those measures.
- (e) a scheme of traffic management has been submitted by the Company and approved by Highways England such scheme to be capable of amendment by agreement between the Company and Highways England from time to time.
- (f) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the Company and Highways England under sub-paragraph (c)(v) above;
- (g) The Company has agreed the estimate of the commuted sum with Highways England, both acting reasonably;
- (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the Company during the construction of the HE works has been agreed in writing by Highways England;
- (i) the Company has procured to Highways England collateral warranties in a form approved by Highways England from the contractor and designer of the HE works in favour of Highways England to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the HE works, including in the selection of materials, goods, equipment and plant;
- (j) a condition survey and regime of monitoring of any Highways England assets or structures that Highways England, in its reasonable opinion, considers will be affected by the HE works, has been agreed in writing by Highways England; and
- (k) a DLOA has been entered into, the completion of which must not be unreasonably withheld or delayed by either party
- (2) Highways England must provide the Company with a list, to be agreed between the Company and Highways England, both acting reasonably, of all structures and assets to be subject to a condition survey and regime of monitoring pursuant to paragraph 30(1)(j) before the first condition survey is conducted.
- (3) Highways England must prior to the commencement of the HE works inform the Company of the identity of the person who will act as a point of contact on behalf of Highways England for consideration of the information required under sub-paragraph (1).
- (4) Highways England must notify the Company of its approval or, as the case may be, of its disapproval of any matter under paragraph 30 and the grounds of disapproval within 56 days of the information required under this paragraph being received by Highways England.
- (5) In the event of any disapproval, the Company may re-submit the information required under the relevant sub-paragraph with modifications and Highways England must notify the Company of its approval or disapproval and the grounds of disapproval within 56 days of the revised detailed design being received by Highways England.
- (6) Approval under this paragraph may be given subject to such reasonable requirements as Highways England may make for the protection of the A21 in the vicinity of the HE works.
- (7) In its approval of the contractor pursuant to sub-paragraph 30(1)(c)(iv), Highways England shall be entitled to take into consideration the experience and expertise of the

proposed contractor, including previous experience of level crossing installation over the public highway. Highways England shall not be acting unreasonably if, in Highways England's reasonable opinion, the proposed contractor does not have sufficient experience and expertise, but shall not be entitled to refuse to approve a contractor merely on grounds that the contractor is providing services to the Company in a volunteer capacity, or intends to use suitably experienced volunteer workers to carry out all or part of the HE works.

#### **Construction traffic and route surveys**

**31.**—(1) The HE works must not commence until a dilapidation survey of the condition of the roads, bridges and retaining walls along the routes approved for construction traffic for the authorised development has been carried out by the Company and has been submitted to and approved in writing by Highways England.

(2) No more than 28 days after the completion of construction of the authorised development, the roads, bridges and retaining walls surveyed under sub-paragraph (1) must be re-surveyed by the Company.

(3) If the re-survey carried out under sub-paragraph (2) indicates that there has been damage to the roads, bridges or retaining walls that have been surveyed, and that such damage is attributable to the use of those roads, bridges and retaining walls by construction traffic for the authorised development, the Company must submit a scheme of remedial works for those damaged roads, bridges and retaining walls to Highways England for its approval in writing, which must not be unreasonably withheld.

#### **Construction of the HE works**

**32.**—(1) The Company must, prior to commencement of the HE works, give to Highways England 28 days' notice in writing of the date on which the HE works will start unless otherwise agreed by Highways England, acting reasonably.

(2) The Company must comply with Highways England's road space booking procedures (in accordance with Highways England's Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy) prior to and during the carrying out the HE works and no HE works for which a road space booking is required shall commence without a road space booking having first been secured, Highways England acting reasonably.

(3) The HE works must be carried out to the reasonable satisfaction of Highways England in accordance with—

(a) the relevant detailed design information and programme of works approved pursuant to paragraph 30(1) above or as subsequently varied by agreement between the Company and Highways England, both acting reasonably;

(b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works together with all other relevant standards and guidance as reasonably required by Highways England to include, inter alia; all relevant interim advice notes and the Traffic Signs Manual and save to the extent that exceptions from those standards and guidance apply which have been approved by Highways England;

(c) the Traffic Signs Regulations and General Directions 2016 and any amendment to or replacement thereof for the time being in force;

(d) such approvals or requirements of Highways England that are required by the provisions of paragraph 30 to be in place prior to commencement of the HE works;

(e) insofar as relevant to the HE works, all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the Company, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the reasonable satisfaction of Highways England; and

(f) the requirements of the DLOA.

(4) The Company must permit and must require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the Company by Highways England) to gain access to the HE works for the purposes of inspection and supervision of the HE works.

(5) The Company must permit and must require the contractor to act upon any reasonable request made by Highways England in relation to the construction of the HE works as soon as reasonably practicable provided such a request is not inconsistent with and does not fall outside the contractor's obligations under its contract with the Company or the Company's powers or obligations under the Order.

(6) If any part of the HE works is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Highways England may by notice in writing require the Company, at the Company's own expense, to comply with the requirements of this Part of this Schedule.

(7) If within 28 days on which a notice under sub-paragraph (6) is served on the Company (or in the event of there being (in the reasonable opinion of Highways England) a danger to road users, within such lesser period as Highways England may stipulate), the Company has failed to take the steps required by that notice, Highways England may carry out:

(a) the HE works; or

(b) such works to reinstate the highway and other land and premises of Highways England as may be reasonably necessary to eliminate the significant danger to road users, and

Highways England may in either case recover from the Company any expenditure reasonably incurred by it in so doing.

(8) If during the carrying out of the authorised works the Company causes damage to the strategic road network then Highways England may by notice in writing require the Company, at the Company's own expense, to remedy the damage.

(9) If within 28 days of the date on which a notice under sub-paragraph (8) is served on the Company, the Company has failed to take steps to comply with the notice, Highways England may carry out the steps required of the Company and may recover from the Company any expenditure reasonably incurred by Highways England in so doing, such sum to be payable within 28 days of demand.

(10) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking any such action as it reasonably believes to be necessary as a result or in connection with of the carrying out or maintenance of the authorised works without prior notice to the Company in the event of an emergency or to prevent the occurrence of danger to road users and Highways England may recover from the Company any reasonable expenditure incurred by Highways England in so doing.

(11) In constructing the HE works, the Company must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the reasonable satisfaction of Highways England.

## **Payments**

**33.**—(1) The Company must fund the whole of the cost of the HE works and all costs incidental to the HE works and must also pay to Highways England in respect of the HE works a sum equal to the whole of any costs and expenses which Highways England reasonably incurs (including reasonable costs and expenses for using internal or external staff) in relation to the HE works including—

(a) the checking and approval of the information required under paragraph 30(1);

- (b) the supervision of the HE works;
- (c) all costs in relation to the transfer of any land required for the HE works; and
- (d) all legal and administrative costs in relation to (a), (b) and (c) above;
- (e) any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs, together comprising “the HE costs”.

(2) The Company must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the HE works.

(3) Highways England must, within 28 days of receipt of a written request from the Company to do so, provide the Company with a schedule showing its estimate of the HE costs prior to the commencement of the HE works and the Company must pay to Highways England the estimate of the HE costs prior to commencing the HE works and in any event prior to Highways England incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, Highways England reasonably believes that the HE costs will exceed the estimated HE costs it may give notice to the Company of the amount that it believes the HE costs will exceed the estimate of the HE costs (excess) and the Company must pay to Highways England within 28 days of the date of the notice a sum equal to the excess.

(5) Highways England must give the Company a final account of the costs referred to in sub paragraph (1) above within 91 days of the issue of the provisional certificate pursuant to paragraph 34.

(6) Within 28 days of the issue of the final account:

(a) if the final account shows a further sum as due to Highways England the Company must pay to Highways England the sum shown due to it;

(b) if the account shows that the payment or payments previously made by the Company have exceeded the costs incurred by Highways England, Highways England must refund the difference to the Company.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 2% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

## **Completion**

**34.**—(1) Following any closure or partial closure of the trunk road for the purposes of carrying out the HE works, the Company must give Highways England the opportunity to carry out a site inspection in order for Highways England to satisfy itself that the trunk road is, in its reasonable opinion, safe for traffic and the Company must comply with any reasonable requirements of Highways England prior to opening the trunk road.

(2) As soon as the Company considers that the provisional certificate may be properly issued it must apply to Highways England for the provisional certificate.

(3) Following an application for a provisional certificate, Highways England must as soon as reasonably practicable:

- (a) inspect the HE works; and
  - (b) provide the Company with a written list of works that HE, acting reasonably, considers are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.
- (4) When—
- (a) a stage 3 road safety audit process for the HE works has been completed in full accordance with the road safety audit standard;
  - (b) the HE works incorporating the RSA actions have been completed to the reasonable satisfaction of Highways England;
  - (c) any further works notified to the Company by Highways England pursuant to sub-paragraph 7(3)(b) have been completed to the reasonable satisfaction of Highways England;
  - (d) the as built information has been provided to Highways England; and
  - (e) the Company has paid the commuted sum to Highways England,
- Highways England must issue the provisional certificate.
- (5) The Company must at its own expense remedy any defects in the HE Works as are reasonably required by Highways England to be remedied during the defects period and must continue to comply with the requirements of the DLOA. All identified defects must be remedied in accordance with the following timescales—
- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of Highways England);
  - (b) in respect of matters which Highways England considers, acting reasonably, to be serious defects or faults, within 14 days of receiving notification of the same; and
  - (c) in respect of all other defects notified to the Company, within 4 weeks of receiving notification of the same.
- (6) Following the issue of the provisional certificate Highways England has responsibility for routine maintenance of the highway save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the Company.
- (7) The Company must submit stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The Company must comply with the findings of the stage 4 road safety audits and must pay all costs of and incidental to such and provide updated as-built information to Highways England.

#### **Final condition survey**

**35.—**(1) The Company must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 34(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to Highways England for its approval, such approval not to be unreasonably withheld or delayed.

- (2) If the re-survey carried out pursuant to sub-paragraph (1) indicates that any damage has been caused to a structure or asset, the Company must submit a scheme for remedial works in writing to Highways England for its approval in writing, such approval not to be unreasonably withheld or delayed, and the Company must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the Company fails to carry out the remedial work in accordance with the approved scheme, Highways England may carry out the steps required of the Company and may recover any expenditure it reasonably incurs in so doing.

(4) Highways England may, at its discretion, at the same time as giving its approval to the re-survey pursuant to sub-paragraph (1) give notice in writing that Highways England will remedy any damage identified in the re-survey and Highways England may recover any expenditure it reasonably incurs in so doing.

(5) The Company must make available to Highways England upon reasonable request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the Company may from time to time carry out.

### **Opening**

**36.**—(1) The Company must notify Highways England of the intended date of opening to the public of the railway authorised by the Order not less than 56 days in advance of the intended date and the Company must notify Highways England of the actual date the HE works will be brought into operation within 14 days of that date.

(2) The level crossing must not be opened for traffic until all such works as are set out in any agreement entered into pursuant to paragraph 30A are completed in accordance with the terms of the agreement and any traffic regulation measures pursuant to paragraph 30(1)(d) are in force.

### **Final Certificate**

**37.**—(1) The Company must apply to Highways England for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, Highways England must as soon as reasonably practicable:

(a) inspect the HE works; and

(b) provide the company with a written list of any further works required to remedy or make good any defect or damage in the HE works or confirmation that no such works are required for this purpose.

(3) The Company must carry out such works notified to it pursuant to sub-paragraph (2).

(4) When Highways England is satisfied, acting reasonably, that any defects or damage arising from defects during the defects period and any defects notified to the Company pursuant to sub-paragraph (2) and any remedial works required as a result of the stage 4 RSA safety audit have been made good to the reasonable satisfaction of Highways England, Highways England must issue the final certificate.

(5) The Company must pay to Highways England within 28 days of demand the costs reasonably incurred by Highways England in identifying the defects and supervising and inspecting the Company's work to remedy the defects that it is required to remedy pursuant to these provisions.

### **Security**

**38.**—(1) The HE works must not commence until—

(a) the HE works are secured by a bond from a bondsman first approved by Highways England substantially in the form of the draft bond attached at Annex 1 or such other form that may be agreed between the Company and Highways England to indemnify Highways England against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the Company in respect of the HE works under the provisions of

this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and

(b) prior to the commencement of the HE works the Company must provide the cash surety which may be utilised by Highways England in the event of the Company failing to meet its obligations to make payments under paragraph 33 or to carry out works the need for which arises from a breach of one or more of the obligations of the Company under the provisions of this Part of this Schedule (which must for the avoidance of doubt be a single cash surety for the entire value of the HE works).

(2) The bond sum and the cash surety must be progressively reduced as follows—

(a) within 20 working days of the issue of the provisional certificate pursuant to paragraph 34(1) Highways England must release the bond provider from its obligations in respect of 80% of the bond sum save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs to settle the claim or claims; and

(b) within 20 working days of the issue of the final certificate pursuant to paragraph 36 Highways England must in writing release the bond provider from its obligations in respect of all remaining liability and release the remainder of the cash security to the Company save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs to settle the claim or claims.

(3) Any sums payable to Highways England pursuant to these protective provisions shall be reduced by an amount equivalent to such sums as are payable by the Company to Highways England or the Secretary of State pursuant to the indemnity and any other arrangements for the reimbursement of the costs of Highways England and/or the Secretary of State for Transport that are required for compliance with the discharge of planning conditions relevant to the authorised works pursuant to Rother District Council's grant of planning permission reference RR/2014/1608/P, so that there shall be no double recovery by Highways England or the Secretary of State.

### **Commutated sums**

**39.** Highways England must provide to the Company an estimate of the commuted lump sum prior to the commencement of the HE works.

**40.** The Company must pay to Highways England the Commuted Sum calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 prior to the issue of the provisional certificate pursuant to paragraph 34(1).

### **Insurance**

**41.** The Company must prior to commencement of the HE works effect sufficient public liability insurance with an insurer to indemnify Highways England in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the HE works or the use of the HE works by the Company and must provide evidence of such insurance having been taken out prior to commencement of the HE works.

### **Indemnity**

**42.—(1)** The Company must indemnify Highways England from and against all costs, expenses, damages, losses and liabilities suffered by Highways England arising from or in connection with any claim, demand, action or proceedings (including but not limited to statutory claims) resulting from:

(a) the construction and maintenance of the HE works; and

(b) the use of the HE works

PROVIDED THAT—

(c) Highways England notifies the Company upon receipt of any claim; and

(d) Highways England following the acceptance of any claim notifies the quantum of the claim to the Company in writing.

(2) Within 14 days of the receipt of the notification referred to in sub-paragraph (1)(c) the Company must pay to Highways England the amount specified as the quantum of such claim.

(3) Sub-paragraphs (1) and (2) do not apply if the costs expenses liabilities and damages were caused by or arose out of the neglect or default of Highways England or its officers servants agents or contractors or any person or body for whom is responsible.

(4) Highways England must not settle any claim without first consulting the Company and having all proper regards to the Company's response to such consultation.

#### **Maintenance of the HE works**

**43.**—(1) Following the issue of the Final Certificate, the Company must maintain those parts of the HE works that it is required to maintain under the DLOA, in accordance with the DLOA.

(2) If the Company fails to maintain any part of the HE works which it is required to maintain pursuant to the DLOA and Highways England reasonably considers that such failure to maintain is causing or may cause a danger to road users or damage to the strategic road network or a Highways England asset or structure, or excessive delays to road users, Highways England may by notice in writing require the Company, at the Company's own expense, to comply with the requirements of this Part of this Schedule.

(3) If within 28 days on which a notice under sub-paragraph (2) is served on the Company (or in the event of there being in the reasonable opinion of Highways England a danger to or delay to road users within such lesser period as Highways England may stipulate), the Company has failed to take the steps required by that notice, Highways England may carry out such works as it reasonably considers necessary and may recover from the Company any expenditure reasonably incurred by it in so doing.

(4) The Company must, prior to the commencement of any works of maintenance to the HE works for which it is responsible pursuant to the DLOA, give Highways England 28 days' notice in writing of the date on which such maintenance works will start unless otherwise agreed by Highways England, acting reasonably; and where carrying out maintenance works following a notice served on it by Highways England pursuant to paragraph 43(2) above, the Company must give as much notice as is reasonably practicable.

(5) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking any such action as it reasonably believes to be necessary in respect of any part of the HE works that the Company are required to maintain pursuant to the DLOA without prior notice to the Company in the event of emergency or to prevent the occurrence of danger or significant delay to road users and Highways England may recover from the Company any reasonable expenditure incurred by Highways England in so doing.

(6) If, for the purposes of maintaining the works pursuant to this paragraph 43, the Company needs to occupy any road space, the Company must comply with Highways England's road space booking requirements and no maintenance works for which a road space booking is required shall commence without a road space booking having first been secured.



(7) The Company must comply with any reasonable requirements that Highways England may notify to the Company, such requirements to be notified to the Company not less than 7 days in advance of the planned commencement date of the maintenance works.

(8) The provisions of paragraph 34(1) shall apply to the opening of any part of the trunk road following occupation of any road space under sub-paragraph 42(1) above.

### **Expert Determination**

**44.**—(1) Article 42 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;

(c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and

(d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

### **Annex 1**

BY THIS BOND [ ] [(Company Regn No )] whose registered office is situate at [ ] ("the Company") and [ ] [(Company Regn No )] whose registered office is situate at [ ] ("the Surety") are jointly and severally bound to [ ] of [ ] ("the [ ]") this [ ] day of [ ] 200[ ] in the sum of [ ] pounds (£[Surety Sum to the payment of which sum the Company and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under an Order under the Transport and Works Act 1992 known as The Rother Valley Railway (Bodiam to Robertsbridge Junction Order 201[ ] ("the Order") the Company is empowered to commence execute perform and complete the highway works to the A21 Trunk Road mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the Order and also to pay to Highways England such sums as are therein provided NOW THE CONDITIONS of this Bond are such that if the Company shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part [ ] of Schedule [ ] of the Order on the Company's part to be observed and performed according to the true purport intent and meaning thereof or if on default by the Company the Surety shall satisfy and

discharge the damages sustained by Highways England thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the Order (and including any reductions as provided for in the Order) but no allowance of time by Highways England under the Order nor any forbearance or forgiveness in or in respect of any matter or thing concerning the Order on the part of Highways England shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 39(2) of Part 4 of Schedule 8 of the Order.

**[Attestation]EXPLANATORY NOTE**

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

This Order authorises the Company to construct the new railway and maintain the new and existing railways in East Sussex from the point at which the existing Kent and East Sussex Railway terminates at Bodiam to a new terminus at Robertsbridge Junction station in Robertsbridge.

The Order authorises level crossings across Northbridge Street and the A21 at Robertsbridge, the B2244 at Udiam and across one bridleway.

The Order also authorises the acquisition of land, and the use of land, for this purpose.

Copies of the Order plans and sections and the book of reference referred to in the Order may be inspected at the offices of Rother Valley Railway Limited at Robertsbridge Junction Station, Robertsbridge, East Sussex, TN32 5DG