
STATUTORY INSTRUMENTS

2024 No. 360

**The A66 Northern Trans-Pennine
Development Consent Order 2024**

PART 2

WORKS PROVISIONS

Principal powers

Development consent, etc. granted by the Order

4.—(1) Subject to the provisions of this Order the undertaker is granted development consent for the authorised development.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of the authorised development

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

Planning permission

6.—(1) It does not constitute a breach of the terms of this Order if, following the coming into force of this Order, any development is carried out or used within the Order limits in accordance with any planning permission granted under the powers conferred by the 1990 Act.

(2) Subject to article 8 (application of the 1991 Act), nothing in this Order is to prejudice the operation of, and the powers and duties of the undertaker under, the 1980 Act, the 1991 Act and the Town and Country Planning (General Permitted Development) (England) Order 2015(1).

Limits of deviation

7.—(1) The following provisions of this article have effect subject to the requirement that the undertaker must, save for any works or operations authorised under articles 14 (protective works to buildings) or 15 (authority to survey and investigate land), construct the authorised development within the Order limits.

(2) In constructing and maintaining the non-linear works comprised in the authorised development, the undertaker may deviate laterally within the limits of deviation for those works shown on the works plans.

(3) Subject to paragraph (4), in constructing or maintaining the linear works comprised in the authorised development the undertaker may deviate laterally from the lines or situations shown on the works plans, within the Order limits, save that—

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- (a) in constructing or maintaining any linear work other than those referred to in column (1) of the table below, in deviating laterally from the centrelines shown on the works plans, the situation of the centreline may be varied up to a maximum of 3 metres either side of the centreline of that work as shown on the works plans; and
- (b) in relation to the linear works referred to in column (1) of the table below, the centreline of that work may be—
- (i) situated on the north side of the centreline of that work shown on the works plans, by a distance not exceeding the permitted limit for each such part, set out in the corresponding entry in column (2) of the table below; and
 - (ii) situated on the south side of the centreline of that work shown on the works plans, by a distance not exceeding the permitted limit for each such part, set out in the corresponding entry in column (3) of the table below.

Table referred to in paragraph (3)

(1)	(2)	(3)
<i>Part of authorised development</i>	<i>Lateral limit of deviation of the centre line numbered work to the north side of the centre line shown on the works plans</i>	<i>Lateral limit of deviation of the centre line of the numbered work to the south side of the centre line shown on the works plans</i>
Work No. 0102-1D	10 metres	10 metres
Work No. 0102-7B	To the extent of the corresponding fine dashed green line shown on the works plans	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 0102-8	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres
Work No. 03-6	To the outer extent of the earthworks on the south side of Work No. 03-1B (being the A66 mainline)	3 metres
Work No. 03-7B	To the extent of the Order limits	To the outer extent of the earthworks on the north side of Work No. 03-1B (A66 mainline)
Work No. 03-8	To the extent of the Order limits	To the outer extent of the earthworks on the north side of Work No.03-1B (A66 mainline)
Work No. 0405-4B	To the extent of the Order limits	To the extent of the Order limits
Work No. 0405-6C	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres

(1)	(2)	(3)
<i>Part of authorised development</i>	<i>Lateral limit of deviation of the centre line numbered work to the north side of the centre line shown on the works plans</i>	<i>Lateral limit of deviation of the centre line of the numbered work to the south side of the centre line shown on the works plans</i>
Work No. 0405-8	3 metres	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 0405-12B	3 metres	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 0405-18	To the extent of the Order limits	To the extent of the Order limits
Work No. 0405-19	To the extent of the Order limits	To the extent of the Order limits
Work No. 06-4B	3 metres	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 06-4D	3 metres	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 06-7A	To the outer extent of the earthworks on the south side of Work No. 06-1D (A66 mainline)	3 metres
Work No. 09-1B	5 metres	5 metres
Work No. 09-1D	To the extent of the Order limits	3 metres
Work No. 09-3B	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres
Work No. 09-3E	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres
Work No. 09-3F	0 metres	5 metres

(4) In constructing or maintaining the linear works referred to in column (1) of the table below, the undertaker may deviate laterally within the Order limits so that the centreline of that work shown on the works plans may be—

- (a) situated on the west side of the centreline of that work shown on the works plans, by a distance not exceeding the permitted limit for each such part, set out in the corresponding entry in column (2) of the table below; and

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- (b) situated on the east side of the centreline of that work shown on the works plans, by a distance not exceeding the permitted limit for each such part, set out in the corresponding entry in column (3) of the table below.

Table referred to in paragraph (4)

(1) <i>Part of the authorised development</i>	(2) <i>Lateral limit of deviation of the centre line of the numbered work to the west side of the centre line shown on the works plans</i>	(3) <i>Lateral limit of deviation of the centre line of the numbered work to the east side of the centre line shown on the works plans</i>
Work No. 0102-7B	To the extent of the corresponding fine dashed green line shown on the works plans	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 0405-7	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres
Work No. 0405-13	To the extent of the corresponding fine dashed green line shown on the works plans or where there is no fine dashed green line, 3 metres	To the extent of the corresponding fine dashed green line shown on the works plans or, where there is no fine dashed green line, 3 metres
Work No. 0405-20B	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres
Work No. 0405-20C	3 metres	To the extent of the corresponding fine dashed green line shown on the works plans
Work No. 06-2B	To the extent of the corresponding fine dashed green line shown on the works plans	3 metres

(5) In constructing or maintaining the authorised development, the undertaker may deviate vertically from the levels shown on the engineering section drawings: plan and profiles and the engineering section drawings: cross sections—

- (a) upwards to any extent not exceeding 1 metre, or, in relation to the parts of the authorised development referred to in column (1) of the table below, not exceeding the permitted limit for each such part, set out in the corresponding entry in column (2) of that table;
- (b) downwards to any extent not exceeding 1 metre, or, in relation to the parts of the authorised development referred to in column (1) of the table below, not exceeding the permitted limit for each such part, set out in the corresponding entry in column (3) of that table; and
- (c) except that—

- (i) in the case of Work Nos. 03-1A and 03-1B, the upwards and downwards vertical limits set out in paragraphs (a) and (b) will not apply where their application would preclude the undertaker from retaining the existing levels of the A66 carriageway along the lengths of those numbered works; and
- (ii) in the case of Work No. 07-8, the upwards and downwards vertical limits set out in paragraphs (a) and (b) will not apply to the levels shown eastwards of chainage reference point 650,000 on Sheet 9 of the engineering section drawings: plan and profiles for scheme 07 where their application would preclude the undertaker from tying Work No. 07-8 into the existing ground levels at Bowes Cross Farm.

Table referred to in paragraph (5)

<i>(1)</i> <i>Part of authorised development</i>	<i>(2)</i> <i>Upwards vertical limit of deviation</i>	<i>(3)</i> <i>Downwards vertical limit of deviation</i>
Work No. 0102-1D	3 metres	3 metres
Work No. 0102-7A	2 metres	2 metres
Work No. 0102-7B	2 metres	2 metres
Work No. 0102-7C	2 metres	2 metres
Work No. 0102-8	1.5 metres	0 metres
Work No. 03-6	To any extent the undertaker considers to be necessary	To any extent the undertaker considers to be necessary
Work No. 03-7B	To any extent the undertaker considers to be necessary	To any extent the undertaker considers to be necessary
Work No. 03-8	To any extent the undertaker considers to be necessary	To any extent the undertaker considers to be necessary
Work No. 0405-1A	3 metres	3 metres
Work No. 0405-2A	3 metres	3 metres
Work No. 0405-5	1 metre	2 metres
Work No. 0405-6B	2 metres	To any extent the undertaker considers to be necessary
Work No. 0405-6C	2 metres	To any extent the undertaker considers to be necessary to tie in with Work No. 0405-7
Work No. 0405-7	1 metre	To any extent the undertaker considers to be necessary
Work No. 0405-8	To any extent the undertaker considers to be necessary to tie in with Work No. 0405-07	To any extent the undertaker considers to be necessary to tie in with Work No. 0405-7
Work No. 0405-12A	1 metre	To any extent the undertaker considers to be necessary to use existing ground levels

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<i>(1)</i> <i>Part of authorised development</i>	<i>(2)</i> <i>Upwards vertical limit of deviation</i>	<i>(3)</i> <i>Downwards vertical limit of deviation</i>
Work No. 0405-12B	1 metre	To any extent the undertaker considers to be necessary to use existing ground levels
Work No. 0405-13	3 metres	To any extent the undertaker considers to be necessary to use existing ground levels
Work No. 0405-20B	1 metre	To any extent the undertaker considers to be necessary to pass beneath Work Nos. 0405-1B and 0405-2B
Work No. 0405-20C	1 metre	To any extent the undertaker considers to be necessary to tie in with Work No. 0405-20B
Work No. 0405-18	1 metre	0 metres
Work No. 06-1B	1 metre	0 metres
Work No. 06-1C	0 metres	To any extent the undertaker considers to be necessary
Work No. 06-2A	2 metres	2 metres
Work No. 06-2B	2 metres	2 metres
Work No. 06-3	0 metres	To any extent the undertaker considers to be necessary
Work No. 06-4B	1 metre	To any extent the undertaker considers to be necessary
Work No. 06-7A	To any extent the undertaker considers to be necessary as a consequence of any horizontal movement northwards	2 metres
Work No. 07-1B	1 metre	1.5 metres
Work No. 07-2B	1 metre	1.5 metres
Work No. 07-7B	2 metres	2 metres
Work No. 08-1B	1 metre	2 metres
Work No. 08-4A	1 metre	2 metres
Work No. 08-4B	1 metre	2 metres
Work No. 09-1B	1 metre	3 metres
Work No. 09-1D	1 metre	4 metres

<i>(1)</i> <i>Part of authorised development</i>	<i>(2)</i> <i>Upwards vertical limit of deviation</i>	<i>(3)</i> <i>Downwards vertical limit of deviation</i>
Work No. 09-3B	1 metre	To any extent the undertaker considers to be necessary
Work No. 09-5	1 metre	3 metres

(6) The maximum vertical limits of deviation referred to in paragraph (5) do not apply where it is demonstrated by the undertaker to the Secretary of State’s satisfaction and the Secretary of State certifies accordingly, following consultation with the relevant planning authority, that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(7) Without limitation on the scope of paragraphs (2) to (5), in constructing or maintaining the authorised development the undertaker may deviate by up to 3 metres from the points of commencement and termination of any linear works shown on the works plans.

(8) In this article, references to—

“linear works” are references to any works shown on the works plans by way of a centreline; and

“non-linear works” are references to any other works shown on the works plans.

Application of the 1991 Act

8.—(1) Works constructed or maintained 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 highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (highway authorities, highways and related matters) 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(2) (dual carriageways and roundabouts) of the 1980 Act or section 184(3) (vehicle crossings over footways and verges) of that Act.

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

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- section 56(4) (power to give directions as to timing of street works);
- section 56A(5) (power to give directions as to placing of apparatus);
- section 58(6) (restriction on works following substantial road works);

(2) 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 Roads and Street Works Act 1991 (c. 22).

(3) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the New Roads and Street Works Act 1991.

(4) Section 56 was amended by sections 40 and 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

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

(6) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the Traffic Management Act 2004.

section 58A(7) (restriction on works following substantial street works);
 section 73A(8) (power to require undertaker to re-surface street);
 section 73B(9) (power to specify timing etc. of re-surfacing);
 section 73C(10) (materials, workmanship and standard of re-surfacing);
 section 78A(11) (contributions to costs of re-surfacing by undertaker); and
 Schedule 3A(12) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any prohibition, restriction, regulation, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 11 (temporary prohibition, restriction or regulation of use or alteration or diversion of streets) whether or not the prohibition, restriction, regulation, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(13) referred to in paragraph (4) are—

section 54(14) (advance notice of certain works), subject to paragraph (6);
 section 55(15) (notice of starting date of works), subject to paragraph (6);
 section 57(16) (notice of emergency works);
 section 59(17) (general duty of street authority to co-ordinate works);
 section 60 (general duty of undertakers to co-operate);
 section 68 (facilities to be afforded to street authority);
 section 69 (works likely to affect other apparatus in the street);
 section 75(18) (inspection fees);
 section 76 (liability for cost of temporary traffic regulation); and
 section 77 (liability for cost of use of alternative route),

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

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

(7) Nothing in article 9 (construction and maintenance of new, altered or diverted streets and other structures)—

(a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and the undertaker is not by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

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

(8) Section 73A was inserted by section 55 of the Traffic Management Act 2004.

(9) Section 73B was inserted by section 55 of the Traffic Management Act 2004.

(10) Section 73C was inserted by section 55 of the Traffic Management Act 2004.

(11) Section 78A was inserted by section 57 of the Traffic Management Act 2004.

(12) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.

(13) 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.

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

(15) Section 55 was amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

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

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

(18) Section 75 was substituted by section 58(2) of the Traffic Management Act 2004.

(b) has effect in relation to street works to which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets and other structures

9.—(1) Subject to paragraphs (6), (7) and (8), any highway (other than a trunk road or special road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing with the local highway authority, the highway, including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(2) Subject to paragraphs (3), (6), (7) and (8), where a highway (other than a trunk road or special road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway, including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(3) Subject to paragraphs (6), (7) and (8), where a footpath, bridleway or byway open to all traffic is altered or diverted under this Order along a vehicular private means of access, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the highway authority and unless otherwise agreed in writing, be maintained (including any culverts or other structures laid under that part of the highway) by and at the expense of the person or persons with the benefit of the vehicular private means of access.

(4) Where a street which is not, and is not intended to be, a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed in writing, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(5) Subject to paragraphs (6), (7) and (8), where a highway is de-trunked under this Order—

- (a) section 265(19) (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) of the 1980 Act applies in respect of that highway; and
- (b) any alterations to that highway undertaken under powers conferred by this Order prior to and in connection with that de-trunking must, unless otherwise agreed in writing with the local highway authority, be maintained by and at the expense of the local highway authority from the date of de-trunking.

(6) In the case of any bridge constructed under this Order to carry a highway (other than a trunk road or special road) over a trunk road or special road, the highway surface must from its completion be maintained by and at the expense of the local highway authority and the structure of the bridge must be maintained by and at the expense of the undertaker.

(7) In the case of any bridge constructed under this Order to carry a highway (other than a trunk road or special road) over another highway which is not a trunk road or a special road, both the highway surface and structure of the bridge must be maintained by and at the expense of the local highway authority from their completion.

(8) In the case of a bridge constructed under this Order to carry a private right of way (whether or not it also carries a footpath or bridleway), the surface of the street and the structure of the bridge must be maintained by and at the expense of the undertaker.

(9) In any action against the undertaker in respect of loss or damage resulting from any failure by the undertaker to maintain a street under this article, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that the undertaker

(19) Section 265 was amended by section 146 of, and paragraph 45 of Schedule 3 to, the Road Traffic Regulation Act 1984 (c. 27) and section 57 of, and paragraph 52 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(10) For the purposes of a defence under paragraph (9), the court must in particular have regard to the following matters—

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

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

Permanent stopping up of streets and private means of access

10.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development, stop up each of the streets and private means of access shown on the rights of way and access plans and specified in columns (1) and (2) of Parts 1, 2, 3 and 4 of Schedule 2 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) to the extent specified and described in column (3) of those Parts of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Parts 1 and 3 of Schedule 2 (being a street or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

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

(3) No street or private means of access specified in columns (1) and (2) of Parts 2 and 4 of Schedule 2 (being a street or private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all of the land which abuts on either side of the street or private means of access to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land; or

- (b) there is no right of access to the land from the street or private means of access concerned; or
 - (c) there is a reasonably convenient access to the land otherwise than from the street or private means of access concerned; or
 - (d) the owners and occupiers of the land have agreed to the stopping up.
- (5) Where a street or private means of access has been stopped up under this article—
- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
 - (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by the undertaker.
- (6) 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, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (7) Following the opening for public use of a public right of way that has been constructed, permanently altered or permanently diverted under the powers conferred by this article the undertaker must supply the surveying authority with plans showing that public right of way as constructed, permanently altered or permanently diverted together with a statement of the modifications required to the definitive statement.
- (8) The plans and statement of modifications to the definitive statement referred to in paragraph (7) are deemed to be an order modifying the definitive map and statement made under section 53(3)(a) (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981(20).
- (9) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).
- (10) In this article “surveying authority” has the meaning given to it by section 66(1)(21) (interpretation of Part III) of the Wildlife and Countryside Act 1981.

Temporary prohibition, restriction or regulation of use or alteration or diversion of streets

- 11.**—(1) The undertaker may, during and for the purposes of constructing the authorised development, temporarily prohibit, restrict or regulate the use of, or temporarily alter or divert any street and may for any reasonable time—
- (a) divert the traffic from the street; and
 - (b) subject to paragraph (3), prevent all persons from passing along the street.
- (2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily prohibited, restricted, regulated, altered or diverted under the powers conferred by this article and within the Order limits as a temporary working site.
- (3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary prohibition, restriction, regulation, alteration or diversion of a street under this article if there would otherwise be no such access.
- (4) The undertaker must not temporarily prohibit, restrict or regulate the use of or alter or divert any street for which it is not the street authority without the consent of the street authority, which

(20) 1981 c. 69. Section 53(3)(a) was amended by section 51 of, and paragraph 1(1) and (3) of Schedule 5 to, the Countryside and Rights of Way Act 2000 (c. 37).

(21) The definition of “surveying authority” was substitute by section 7 of, and paragraph 7 of Schedule 3 to, the Local Government Act 1985 (c. 51). There are other amendments to section 66(1) that are not relevant to this Order.

may attach reasonable conditions to any consent, but its consent must not be unreasonably withheld or delayed.

(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, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Access to works

12. The undertaker may form and lay out means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Discharge of water

13.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse, public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(22).

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

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(23).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(24), have the same meanings as in that Act.

(22) 1991 c. 56. Section 106 was amended by section 35(1) and (8), 43(2) and 56(7) 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 section 32 of, and paragraph 16(1) of Schedule 3 to, the Flood and Water Management Act 2010 (c. 29).

(23) S.I. 2016/1154.

(24) 1991 c. 57.

Protective works to buildings

14.—(1) Subject to the following provisions of this article, the undertaker may at the undertaker's own expense carry out such protective works to any building lying within the Order limits or which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

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

(3) Subject to paragraph (5), for the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

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

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

and if it reasonably requires, the undertaker may take possession, or exclusive possession, of the building and any land or part thereof for the purpose of carrying out the protective works.

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 51 (arbitration).

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

(8) Where—

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

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

(9) Subject to article 39 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 152(25) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Section 13(26) (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125(27) (application of compulsory acquisition provisions) of the 2008 Act.

(11) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

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

Authority to survey and investigate land

15.—(1) The undertaker may for the purposes of the construction, operation or maintenance of the authorised development enter on—

- (a) any land shown within the Order limits; and
- (b) where reasonably necessary, any land which is adjacent to, but outside the Order limits

and—

- (i) survey or investigate the land (including any watercourses, groundwater, static water bodies or vegetation on the land);
- (ii) without limitation on the scope of sub-paragraph (i), make any excavations or trial holes and boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and water samples and discharge water from sampling operations on to the land;
- (iii) without limitation on the scope of sub-paragraph (i), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
- (iv) 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 boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) The notice required under paragraph (2) must indicate the nature of the survey or investigation that the undertaker intends to carry out.

(4) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of authority to do so; and

(25) Section 152 was amended by S.I. 2009/1307.

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

(27) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes and boreholes.
- (5) No trial holes or boreholes are to be made under this article—
 - (a) in land located within the highway boundary without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority.
- (6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Removal of human remains

- 16.—**(1) In this article—
- “the burial authority” means the burial authority for the specified land from which the relevant human remains are to be removed, being Westmorland and Furness Council or the North Yorkshire Council, or any successor to their functions; and
 - “the specified land” means any land within the Order limits.
- (2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.
- (3) Subject to paragraph (12), before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—
- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the specified land; and
 - (b) displaying a notice in a conspicuous place on or near to the specified land.
- (4) As soon as reasonably practicable after the first publication of a notice under paragraph (3), the undertaker must send a copy of the notice to the burial authority.
- (5) At any time within 56 days after the first publication of a notice under paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.
- (6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—
- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
 - (b) removed to, and cremated in, any crematorium,
- and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).
- (7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner

by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land;
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days;
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the burial authority.

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

- (a) may remove the remains;
- (b) must apply for direction from the Secretary of State under paragraph (15) as to their subsequent treatment; and
- (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) In this article—

- (a) references to a relative of the deceased are to a person who—
 - (i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
 - (ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased; and

- (b) references to a personal representative of the deceased are to a person or persons who—
- (i) is the lawful executor of the estate of the deceased; or
 - (ii) is the lawful administrator of the estate of the deceased.

(15) The removal and subsequent treatment of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(16) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(17) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(28) is not applied to a removal carried out in accordance with this article.

(18) Section 239 (use and development of burial grounds) of the 1990 Act applies—

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 29 (temporary use of land for constructing the authorised development) or 30 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use of land by the undertaker in accordance with the provisions of this Order,

and in section 240(1) (provisions supplemental to ss.238 and 239) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (16) of this article and section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

(19) The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950(29) do not apply to the authorised development.

Felling or lopping of trees and hedgerows

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

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) Without prejudice to the generality of paragraph (1) the undertaker may, for the purposes of the construction of the authorised development, in relation to the trees identified in columns (1), (2) and (3) of Schedule 3 (trees subject to tree preservation orders) carry out the corresponding works described in column (4).

(3) In carrying out any activity authorised by paragraph (1) or (2) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(28) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1) and amended by section 96(1) of, and paragraph 1 of Schedule 3 to, the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (No. 3).

(29) S.I. 1950/792.

(4) Where works to a tree are authorised by paragraph (1) or (2) and a tree preservation order is in force in relation to that tree—

- (a) written consent for the works is deemed to have been granted by a local planning authority having functions under the tree preservation order; and
- (b) the duty imposed by section 206(1)(30) (replacement of trees) of the 1990 Act does not apply.

(5) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, is to be determined as if it were a dispute under Part I (determination of questions of disputed compensation) of the 1961 Act.

(6) The undertaker may, for the purposes of constructing, maintaining or operating the authorised development but subject to paragraph (3), remove any hedgerow within the Order limits that is required to be removed.

(7) In this article "hedgerow" includes a hedgerow to which the Hedgerow Regulations 1997(31) apply and includes important hedgerows.

Maintenance of drainage works

18.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article "drainage" has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(32).

(30) Section 206(1) was amended by section 192 of, and paragraph 11 of Schedule 8 to, the Planning Act 2008 (c. 29).

(31) S.I. 1997/1160.

(32) 1991 c. 59. The definition of "drainage" was substituted by section 100(2) of the Environment Act 1995 (c. 25).