

Mr Ian Gambles
Director of Operations
Infrastructure Planning Commission
Temple Quay House
Temple Quay
Bristol
BS1 6PN

10th November 2011

Dear Mr Gambles,

I am writing from Forewind further to earlier letters and a meeting with number of your colleagues at the IPC specifically regarding the issue of the application of Model Clause 5 (3) set out in Schedule 1 to the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.

Forewind wrote to the IPC on this issue in July 2011, in advance of a meeting with your colleagues in September. I have attached a copy of our original letter with our specific queries and the meeting minutes that were agreed with IPC. You will note that your colleagues advised us to speak specifically with DECC on this issue. I have also attached the letter that Forewind wrote to DECC in September.

Forewind met with Michael Jampel from ORED at DECC last Thursday, along with other colleagues within ORED to discuss the queries set out in the letters. Michael has since advised Forewind that DECC is unable to provide us with any advice on our query, and that all queries of this nature, even where ultimately the issue in question is a matter for the Secretary of State (SoS) (hence our directing the query to DECC), should be directed to the IPC. We understand that DECC's advice accords with Section 51 of the Planning Act 2008.

To summarise, Model Clause 5 provides for the transfer to another person of the powers and liabilities associated with all or part of a consented project. This would appear to confer upon an applicant flexibility to ensure that projects can be delivered by more than one person. However, it specifies that the transfer cannot be undertaken without consent from the appropriate authority, which both the IPC and DECC have confirmed would be the relevant Secretary of State.

Critically, it is this issue of consent being required that Forewind is now urgently seeking a response on. In particular, the implementation of Model Clause 5 post consent, when Forewind may wish to transfer the benefit of the consent to one or more third parties including an OFTO.

As set out in our earlier letter to DECC, Forewind's legal advisers have suggested that Model clause 5 has been drafted and included in the model provisions for the same reason that it is included in Transport and Works Act Orders. Namely, that the purpose of a reference to the Secretary of State in Model Clause 5 is to identify a consenting body to ensure that the provision of a model clause to authorise the transfer of functions to an unspecified third party does not offend against the public law principle of *delegata potestas non potest delegari*. This is the public law rule that applies which means whatever authority conferred must be to a specified body. We believe that the intended reference to the Secretary of State in Model Clause 5 operates to authorise the sub-delegation of powers in favour of a third party in circumstances that would otherwise render the power *ultra vires*.

We had therefore assumed that the process post-determination by the Secretary of State to consent the transfer of a consent would be relatively straightforward and would not present a risk to the delivery of our projects. It is this latter point that we would like to clarify with you in order for us to determine the optimum consenting strategy for our projects.

At the meeting on 7th Sept, the IPC volunteered advice on purely procedural issues. However, it is Forewind's opinion that the questions that have been formulated on this matter do not seek a view as to the merits of an application, and therefore we do not consider that the IPC is precluded from responding under section 51(2). Therefore, we would be pleased understand the rationale behind this particular Model Clause. A number of specific questions are set out in Forewind's letter to DECC, dated 29th Sept that we would be grateful for responses on.

If it would be helpful, our lawyers would be happy to speak with appropriate lawyers in the IPC or DECC.

Forewind is urgently seeking to confirm its development strategy, and this issue is critical to informing that strategy. We are seeking to complete a paper to our board on this issue by the 22nd November.

I look forward to hearing from you. However, should require any further information in the meantime, please do not hesitate to contact me on the details provided below.

Yours faithfully,

Kim Gauld-Clark
Cable Consents and Stakeholder Manager
Forewind

CC. Janet Wilson - IPC
Kathryn Powell - IPC
Jeff Penfold – IPC
Michael Jampal – DECC
Giles Scott - DECC

Mr David Cliff
IPC Case Leader
Infrastructure Planning Commission
Temple Quay House
Temple Quay
Bristol
BS1 6PN

26th July 2011

Dear David,

I am writing to request a meeting with you at your earliest convenience to discuss some key issues relating to the development of offshore wind farm projects. I set out below the context for the issues raised along with a number of questions that I would like the IPC to consider and respond to at our proposed meeting.

Background

The development of the larger Round 3 offshore wind farm zones will result in the identification of proposed development areas which could be the subject of a number of separate applications to the IPC for development consent in order to develop the full extent of the development area identified. These projects, depending upon the availability of grid connection dates are likely to be constructed between 2015 and 2020. In the event that more than one of these projects connect into the same onshore National Grid substation, it is likely that some of these projects might be delivered in very close geographic proximity to one another. For these projects, the locations of the onshore and offshore export cabling routes, landfall and onshore converter stations could be virtually identical.

Possible Development Scenarios

At the application phase, an applicant is unlikely to be in a position to say with certainty how wind farm projects that obtain development consent under the 2008 Act will be delivered. Delivery will be dependent upon commercial decisions made by investors in the future which will be driven by, investment potential, appetite for risk and other economic and commercial factors. In order to ensure that consented projects secure the necessary investment and can be built, the consents must be structured to allow for the flexibility that investors will be seeking. This is reflected in National Policy Statement EN-3, for example paragraph 2.6.36. It may be the case that a consent for a 2GW wind farm project may not be implemented as a single functional wind farm, but may be constructed as two or more undertakings and owned by two or more different parties (setting aside the issue of OFTO ownership).

By way of example, using the 2GW scenario described above a possible scheme might entail the construction of a project of up to 2GW of total generating capacity and 2GW equivalent of onshore and offshore electrical infrastructure to connect it to the electricity grid at a single onshore location.

A delivery of up to 2GW of offshore wind farm generating capacity (and associated development) that may be delivered as part of the project could be structured in the following ways:-

- 1 x up to 2 GW project
- 2 x up to 1GW projects or phases
- 4 x up to 500MW projects or phases

Such a delivery structure would need to provide the opportunity for one or more operators to deliver each wind farm in phases post-consent as the number of operators or the size of the wind farms is not likely to be known at the time of application. Model Clause 5(3) set out in Schedule 1 to the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 provides for the transfer to another person of the powers and liabilities associated with all or part of a consented project. This would appear to confer upon an applicant flexibility to ensure that projects can be delivered by more than one person.

In order to provide for this it is recognised that the EIA would need to assess the environmental and ecological implications of these delivery scenarios (or at least the Rochdale Envelope parameters of the potential delivery scenarios) so that the realistic worst case for all of the options can be clearly presented in the application documents and the legal mechanism for addressing mitigation through the Requirements would need to be clearly set out within the DCO.

My first question therefore relates to whether it might be possible to combine two (or more) projects within a defined development area within one application for development consent and retain the flexibility to deliver these projects independently and in accordance with the availability of the relevant onshore grid connection points. Each project could be an NSIP in its own right and each element of the works would be called up as a separate work in the development consent order. In that way the arrangements for the exercise of the powers that may be conferred by an order containing Model Clause 5(3) could be utilised to provide for delivery of each element by separate entities, in so far as this would be permitted by the terms of any proposed order.

It occurs to me that promoting two very similar but separate projects, each project being an NSIP in its own right, in very close proximity to one another could require two SOCCs, two consultation processes, two packages of consultation documents and two packages of application documents (one for each project application) all of which would be largely identical to each other. This would

be likely to cause confusion to stakeholders wishing to make representations on the project proposals and lead to confusion and uncertainty in the application process.

In so far as there is no obvious bar to an applicant scoping a project in the manner highlighted above, a further related question is whether in the unlikely (but not unforeseeable) event that one or more of the project segments were for some reason not to proceed (e.g. inability to secure finance/inability to enter into competitive contracts etc) might it still be possible for the other segments to be delivered under the consent obtained? It occurs to me that the DCO would need to be structured in such a way that this would not constitute an offence under s161 of the Planning Act 2008 and that the Requirements and other conditions attached to the consent would need to be capable of being complied with in respect of the segments that were implemented. Further, the EIA would have to assess the various scenarios to allow for any eventuality.

Some advice appears to have been given by the IPC which has been published on its Advice Log which is not entirely clear. This may be due to the facts of the case but I would like to explore this important issue with you at a meeting at your earliest opportunity and would be grateful if you could respond with some available dates.

If you require any further information in the meantime, please do not hesitate to let me know.

Yours faithfully,

Sharn Ward
Offshore Consents and Stakeholder Manager
Forewind

Meeting Note

File reference	Dogger Bank Offshore Wind farm - EN010021
Status	Final
Author	Jeffrey Penfold

Meeting with	Forewind
Meeting date	7 September 2011
Attendees (IPC)	David Cliff, Glyn Roberts, Sheila Twidle, Lynne Franklin, Kathryn Powell, Laura Allen and Jeffrey Penfold.
Attendees (non IPC)	Lee Clarke – General Manager, Forewind Mark Thomas – Head of Onshore Development, Forewind Sharn Ward – Offshore Consents and Stakeholder Manager, Forewind Stephen Collings – Partner, Eversheds Simon Bailey – Forewind Solicitor (telephone) Hazel Tait – Forewind Solicitor (telephone).
Location	Temple Quay House, Bristol.

Meeting purpose	Project update meeting and discussion of matters raised in Forewind's letters of 26 July and 22 August 2011
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Summary of key points discussed and advice given	<p>Forewind Progress Update</p> <p>Forewind provided update on current progress and the ongoing timetable for the project. Proposed submission date of first application(s) is December 2012. Any changes to this will be communicated to the IPC when known.</p> <p>Model Clauses 4 and 5 – Consent to transfer benefit of the order.</p> <ul style="list-style-type: none"> • IPC advised that the relevant Secretary of State would be the 'consenting body' as referred to in clause 5.1 of the Infrastructure Planning Commission (Model Provisions) (England and Wales) Order 2009. • The consenting process required by article 5 of the Infrastructure Planning Commission (Model Provisions) (England and Wales) Order 2009 to approve a transfer of the benefit of the Development Consent Order (DCO) was discussed and the IPC advised Forewind to consider discussing with DECC what information may be required and tests adopted before a transfer is granted. • It will be for the Examining Authority to decide whether or not powers should be capable of transfer – this will be dependent on the facts and circumstances (for example what safeguards are put place).
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- The IPC will provide Section 51 advice about any procedural steps which may be involved pursuant to article 5 if further information is obtained from DECC.

Consultation Strategy and Statement of Community Consultation (SoCC):

- Discussion on combining the s.42 and s.47 consultation processes for co-located projects. For example, can a single SoCC be produced for more than one application and can consultation go ahead before deciding upon a final application strategy?
- IPC advised that the application material submitted will need to cover, and explain, the approach to consultation adopted. Compliance with s.42 and s.47 must be evident and explained in the application. Consultation must be delivered in accordance with the SoCC. An adequacy of consultation representation will be requested from the relevant Local Authorities during the acceptance stage of the application which will be taken into consideration by the appointed Commissioner who will determine whether to accept the application.
- Discussion took place of the practicalities of submitting either a single or multiple applications where projects are adjacent to each other. IPC advised that how Forewind decides to bring forward the proposed development (i.e. several phases submitted as separate DCO applications or combining several phases within one DCO application) will be for Forewind to determine. However the projects would need to be properly defined in the draft DCOs including any necessary phasing details and be properly considered under the EIA Regulations and through other application documentation. Forewind recognised that there are advantages with submitting a single application, in terms of clarity and simplicity of the project description with regard to third parties, subject to these caveats.
- IPC advised that careful consideration should be given to the pre-application consultation procedure in order not to confuse the consultees with multiple project consultation.
- The IPC also emphasised the need to reach all relevant local consultation groups including hard to reach groups. The IPC suggested that the relevant local authorities may be able to assist Forewind in this regard.
- Agreed that Forewind would submit a letter to the IPC seeking further advice relating to consents strategy. The IPC will consider any further queries raised and respond as appropriate.

Scoping for Project(s):

- It was noted that the IPC has previously provided Forewind with a Scoping Opinion for the proposed Dogger Bank Offshore Wind Farm project in November 2010 (available on

the IPC's website).

- The IPC advised that scoping is not a mandatory requirement under the EIA Regulations. The IPC advises that an applicant may wish to consider the need to request a new Scoping Opinion where the proposed development changes substantially during the EIA process, prior to the submission of an application. However, this is for an applicant to determine.

Expected Duration of a DCO:

- Any change to the duration of the DCO from what is set out in the Miscellaneous Prescribed Provisions (five years) needs to be explained and justified within the Explanatory Memorandum. The implications of such a change, including the environmental implications as set out in the ES, will also need to be addressed as appropriate within the overall application documentation, including implications for the draft requirements.

Definition of Commencement of Development:

- Forewind queried the definition of 'commencement' in the context of offshore wind farms. The IPC referred to s.155 of the Planning Act 2008 and the definition of 'commencement' under the Town and Country Planning Act 1990.

Section 53 – Rights of entry

- Forewind sought clarification from the IPC on whether all s.42 consultation had to have been completed for an applicant to satisfy the criteria for making a request to the IPC under s.53 of the Planning Act 2008. IPC confirmed that the requirement under s.53(2)c requires that the 'proposed applicant has complied with section 42', the IPC has interpreted this to mean that the developer has detailed the consultees which the developer has identified and consulted in accordance with section 42 of the Act. Forewind did not indicate if and when a s.53 application would be submitted to the IPC.

Statutory Consultee List:

- Forewind explained that it would like to reduce the area included with the DCO site boundary. The IPC emphasised that the consultees identified by the IPC (and provided in the scoping opinion) was based on the proposed DCO boundary submitted with the scoping request. Although it may help inform Forewind's identification of consultees under s.42 of the Act, the IPC cautioned that a reduced DCO boundary may change the consultees that Forewind is required to consult under s.42 of the Act and it is for Forewind to satisfy themselves that all relevant persons are consulted.
- IPC advised that the Consultation Report should explain why (where it was possible to exercise discretion) prescribed Consultees had or had not been consulted. Additional

	<p>consultees to those prescribed under s.42 may be consulted by Forewind if considered appropriate.</p> <p>AOB:</p> <ul style="list-style-type: none"> • IPC advised on recent changes to IPC guidance and advice. Guidance Note 2 has been withdrawn with some of its content on matters concerning the draft DCO and Explanatory Memorandum moved to a new Advice Note 13. Advice Note 6 has been updated and now includes an acceptance checklist which applicants may wish to use to assist in preparing their application documentation. • Where the IPC determines that a proposed development is likely to have a significant effect on the environment of another EEA State, the IPC will undertake transboundary consultation in accordance with Regulation 24 of the EIA Regulations. The procedure is set out in Advice Note 12 (Development with significant transboundary impacts consultation).
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Specific decisions/ follow up required?	<ul style="list-style-type: none"> • IPC to forward comments on the developer's draft SoCC (this has been provided); • Forewind to submit letter on the following seeking further IPC advice: <ul style="list-style-type: none"> - combining examinations of multiple DCO projects; - whether s46 notice can be submitted for more than one project.
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IPC Circulation List	David Cliff
	Sheila Twidle
	Lynne Franklin
	Kathryn Powell
	Laura Allen

Anne Stuart
Head of Planning Reform
Department of Energy and Climate Change
Area 3A
3 Whitehall Place
London
SW1A 2AW

29th September 2011

Dear Anne,

I work within the development team at Forewind and we would welcome the opportunity to meet with you, at your earliest convenience, to discuss some key issues relating to the development of offshore wind farm projects within our Round 3 Dogger Bank Zone. I set out below the context for the issues raised along with a number of questions that it would be helpful to cover at our proposed meeting.

Background

The development of the larger Round 3 offshore wind farm zones will result in the identification of proposed development areas which could be the subject of a number of separate applications to the Infrastructure Planning Commission (“IPC”) (or its successor) under the Planning Act 2008 (“the 2008 Act”). The aim is to commence construction of these projects within the next 5 years.

Possible Development Scenarios

At the application phase, it is unlikely we will be in a position to say with certainty how the construction and financing of the consented wind farm projects will be delivered. Delivery will be dependent upon commercial decisions made by investors in the future which will be driven by investment potential, appetite for risk and other economic and commercial factors. In order to ensure that consented projects secure the necessary investment, the consents must be structured to allow for the flexibility that investors will need. This is reflected in National Policy Statement EN-3, for example paragraph 2.6.36.

By way of example, the delivery of a 2GW offshore wind farm (and associated development) could be structured in the following ways:–

- 1 x up to 2 GW project
- 2 x up to 1GW projects or phases
- 4 x up to 500MW projects or phases

Such a delivery structure would need to accommodate the opportunity for one or more developers to deliver each wind farm in phases post-consent as the number of developers or the size of the individual wind farms will not be known at the time of application. It is therefore critical to the successful promotion of an application for development consent that sufficient powers are conferred upon a developer to facilitate the transfer to another developer of some or all of the powers, rights and liabilities associated with the consented scheme.

Under Section 37(3) of the 2008 Act an applicant may apply for a development consent order (“DCO”) which may grant development consent for the purposes of Section 115 of the 2008 Act. Under Section 38(1) of the 2008 Act the Secretary of State may prescribe model provisions for incorporation in a draft DCO which may be required to accompany an application for development consent. Under Section 28(2) of the 2008 Act the IPC must have regard to any model provisions prescribed by an order under section 28(1) of the 2008 Act when exercising its power to make an order granting development consent.

Model clauses for insertion in DCO’s have been prescribed by the Secretary of State in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (“the 2009 Order).

In light of the above, we have been giving consideration to the likely scope of the relevant model clauses to be incorporated in a DCO to accompany our application for development consent for development of the first phase of the Dogger Bank zone. We have held initial discussions with the IPC concerning the scope of any likely application for a DCO and a query has arisen in the context of the drafting of a model clause 5 (“Model Clause 5”) for a development of this type.

Model Clause 5 provides as follows:

5.—(1) The undertaker may, with the consent of the *[specify person or body]*—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

It has been noted that the identity of the consenting body specified in the first line of paragraph (1) has been left vacant. Relevant Guidance published by the DCLG does not

appear to provide any explanation as to the intended affect of this particular provision or the identity of the person or body to be referred to for the purpose of consent.

At a recent meeting between members of the Forewind project team and the IPC, the IPC confirmed that they understand the identity of the person that the IPC expected to be inserted into the square brackets in Model Clause 5(1) would be the Secretary of State for Energy and Climate Change. We understand that Model Clause 5(1) provides for all or any of the benefit of the provisions of a DCO, including the power of compulsory acquisition over land, to be transferred to one or more third parties on such terms as may be agreed. Similarly a lease may be granted under Model Clause 5(1)(b) for the same purposes. However, the exercise of any of the benefits or rights transferred will be subject to the same restrictions and obligations as if they have been exercised by the applicant.

Model Clause 5 is very similar to a corresponding provision contained in model clauses for use in the promotion of orders under the Transport and Works Act 1992 and which is used frequently in promoting such orders. I attach Model Clause 35 prescribed by the Transport Works (Model Clauses for Railways and Tramways) Order 2006 for ease of reference. You will note that under paragraph (1) the exercise of the power is subject to the consent of the Secretary of State. We understand that in the context of railway and other projects Model Clause 35 does not generate substantive issues at the post consent stage.

We believe that a reference to the Secretary of State in Model Clause 5 has been included for the same reason as in the corresponding Model Clause used in TWA Orders. Namely, that the purpose of a reference to the Secretary of State in Model Clause 5 is to identify a consenting body to ensure that the provision of a model clause to authorise the transfer of functions to an unspecified third party does not offend against the public law principle of *delegata potestas non potest delegari*. This is the public law rule that applies which means whatever authority conferred must be to a specified body. We believe that the intended reference to the Secretary of State in Model Clause 5 operates to authorise the sub-delegation of powers in favour of a third party in circumstances that would otherwise render the power *ultra vires*.

Notwithstanding the above, we recognise that the IPC process is a new process and there is some uncertainty about how the consenting process will operate. Given the importance of retaining flexibility post-consent (highlighted above) we would like to discuss with you:-

1. Confirmation that Forewind may include the Secretary of State for Energy and Climate Change as the body to issue consent to a transfer requested under Model Clause 5.
2. Confirmation that substantive issues as to the justification for seeking a power to transfer are matters for the consenting stage of the IPC process only, rather than at the stage when a transfer is intended to take place?
3. Confirm whether there will be established policy criteria that will be applied in determining whether or not to grant consent to transfer benefits where Model Clause 5 is included in a DCO, and if so, what those criteria would be?

4. Can you advise of the likely period to determine a consent application that may be made under Model Clause 5?
5. Will any additional consenting requirements be required at that stage?
6. Is it intended that there will be liaison between DECC and the IPC to provide guidance to applicants and potential funders as to the manner in which this discretion is to be exercised?

The issues raised in this letter are currently the subject of significant discussion within Forewind. As such, we would like to attend a meeting with yourselves to discuss these points at your earliest convenience. I would be grateful if you could get in touch if you have any immediate queries, and further provide me with some dates that would be suitable for yourselves.

Please do not hesitate to contact me should you need any further clarification of the issues.

I look forward to hearing from you.

Yours sincerely

Kim Gauld-Clark
Cable Consents and Stakeholder Manager
Forewind

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CC: Michael Jampal – Office for Renewable Energy Deployment, DECC

2006 No. 1954

TRANSPORT AND WORKS, ENGLAND AND WALES

TRANSPORT, ENGLAND AND WALES

The Transport and Works
(Model Clauses for
Railways and Tramways)
Order 2006

Made - - - - -

18th July 2006

Coming into force - - -

8th August 2006



Open space

33.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the exchange land and [insert name of local authority] has certified that a scheme for the provision of the exchange land as open space has been implemented to its satisfaction.

(2) Upon the requirements of paragraph (1) being satisfied, the exchange land shall vest in [insert name of local authority] subject to the like rights, trusts and incidents as attached to the special category land; and the special category land shall thereupon be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

“the special category land” means the land described as open space on the plan entitled “Open Space Plan” attached to the land plan, which may be acquired compulsorily under this Order and for which exchange land is to be provided; and

“the exchange land” means the land described as exchange land on the plan entitled “Open Space Plan” attached to the land plan.

Power to operate and use railway

34.—(1) The undertaker 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, shall prejudice or affect the operation of Part 1 of the Railways Act 1993(a).

Power to transfer undertaking

35.—(1) The undertaker may, with the consent of the Secretary of State—

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

(2) Where an agreement has been made by virtue of paragraph (1) references in this Order to the undertaker shall include references to the transferee or the lessee.

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

Power to charge fares

36. The undertaker may demand, take and recover or waive such charges for carrying passengers or goods on the railway comprised in the authorised works, or for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

Application of landlord and tenant law

37.—(1) This article applies to—

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

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

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

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

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(a) 1993 c. 43 as amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).