

# White Rose Carbon Capture and Storage (CCS) Project

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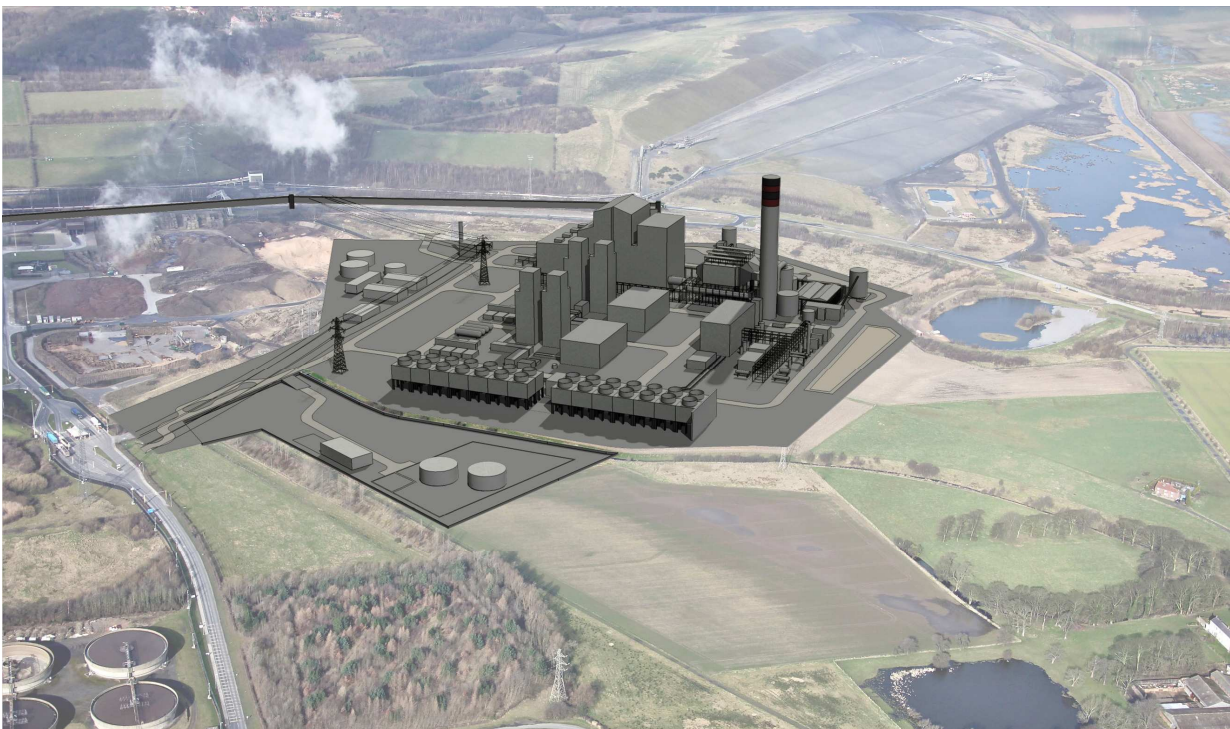
## The White Rose CCS (Generating Station) Order

Land adjacent to and within the Drax Power Station site, Drax, near Selby, North

## Draft Development Consent Order

The Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 - Regulation 5(2)(b)



Applicant: Capture Power Limited  
Date: November 2014

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201[●] No. [●]

**INFRASTRUCTURE PLANNING**

**The White Rose CCS (Generating Station) Order 201[●]**

<i>Made</i>	- - - -	[●]
<i>Laid before Parliament</i>		[●]
<i>Coming into force</i>	- -	[●]

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The undertaker has applied to the Secretary of State for an order granting development consent in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a).

The application was examined by an Examining authority appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the 2008 Act(b) and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The Examining authority, having considered the application together with the documents that accompanied it and the representations made and not withdrawn, has, in accordance with section 74 of the 2008 Act, submitted a report and recommendation to the Secretary of State.

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(a) S.I. 2009/2264, as amended by S.I. 2010/493, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, and S.I. 2013/522.

(b) 2008 c.29.

(c) S.I. 2010/103, amended by S.I. 2012/635.

The Secretary of State, having considered the report and recommendation of the Examining authority, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application.

The Secretary of State has decided to grant development consent and, under sections 114, 115, 120 and 122 of the 2008 Act, to make the following Order:

## PART 1

### Preliminary

#### Citation and commencement

1. This Order may be cited as the White Rose CCS (Generating Station) Order 201[●] and comes into force on [●] 201[●].

#### Interpretation

2. (1) In this Order--

"the 1961 Act" means the Land Compensation Act 1961(a);

"the 1965 Act" means the Compulsory Purchase Act 1965(b);

"the 1980 Act" means the Highways Act 1980(c);

"the 1990 Act" means the Town and Country Planning Act 1990(d);

"the 1991 Act" means the New Roads and Street Works Act 1991(e);

"the 2008 Act" means the Planning Act 2008;

"access and rights of way plans" means the plans certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;

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

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- (a) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (b) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991(c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (c) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (d) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (e) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

"approved plans" means the plans listed in Part 2 of Schedule 1 (approved plans) and such revised or supplemental plans as may be approved pursuant to the requirements;

"authorised development" means the development and associated development described in Part 1 of Schedule 1 (authorised development), which is development within the meaning of section 32 of the 2008 Act;

"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;

"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;

"commercial use" means that carbon dioxide produced by the generating station is being transported from the Order land for permanent storage;

"commissioning" means the process of testing all systems and components of the authorised development, including those not yet installed, in order to ensure that they and the authorised development as a whole functions in accordance with the undertaker's design objectives, specification and operational requirements;

"completion of commissioning" means in respect of the generating station, that it is first in commercial use, such date to be certified by the undertaker to the relevant planning authority;

"compulsory acquisition notice" means a notice served in accordance with section 134 of the 2008 Act;

"the design and access statement" means the document certified as the design and access statement by the Secretary of State for the purposes of this Order;

"the environmental statement" means the environmental statement submitted pursuant to regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and certified as such by the Secretary of State for the purposes of this Order;

"first temporary footpath" means the alternative route for pedestrians to be provided by the undertaker along the routes shown by the following markings on the access and rights of way plans:

- (a) a dashed green line between points 3 and 4;
- (b) a solid green line between points 4 and 5; and
- (c) a dashed green line between points 5 and 6;

"the generating station" means the generating station comprised within Work No. 1A;

"highway" has the same meaning as in the 1980 Act;

"the land plans" means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

"limits of deviation" means, in respect of Work Nos. 1A, 1B, 3, 6 and 8 the outer limits of the corresponding numbered area shown on the works plans and, in respect of Work Nos. 2, 4, 5 and 7, the limits to either side of the corresponding numbered line shown on the works plans;

"local highway authority" has the same meaning as in the 1980 Act;

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct, replace or improve but not so as to vary from the authorised development and only to the extent that such operations or works are not likely to give rise to any materially new or materially different environmental effects compared to those identified in the environmental statement, and any derivative of "maintain" is to be construed accordingly;

"NGET" means National Grid Electricity Transmission plc (company registration number 02366977) of 1-3 Strand, London, WC2N 5EH;

"Northern Powergrid (Yorkshire) plc" means Northern Powergrid (Yorkshire) plc (company registration number 04113220) of Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF;

"Order land" means the land shown on the land plans which is within the limits of land to be acquired and described in the book of reference;

"the Order limits" means the limits shown on the works plans within which the authorised development may be carried out;

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

"relevant planning authority" means the district planning authority for the area in which the land to which the provisions of the Order apply is situated;

"requirements" means the requirements in Schedule 2 (requirements);

"second temporary footpath" means the alternative route for pedestrians to be provided by the undertaker along the route shown by a dashed green line between the points marked 8 and 10 on the access and rights of way plans;

"statutory undertaker" means any person falling within section 127(8) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act(b), together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"undertaker" means Capture Power Limited (company registration number 07885334) or the person who has the benefit of this Order in accordance with articles 6 (benefit of Order) and 7 (consent to transfer benefit of Order);

"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;

"the works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order; and

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

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

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

(5) References in this Order to a work designated by a number, or by a combination of letters and numbers (for example, "Work No. 1A") are references to the works so designated in Part 1 of Schedule 1 and references to "a part" of a Work No. are to any part of that Work No.

(6) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the works plans, the land plans or the access and rights of way plans (as specified in each case).

(7) The expression "includes" is to be construed without limitation.

(8) References to a "plot" in this Order are references to the plots shown on the land plans and detailed in the book of reference.

## PART 2

### Principal powers

#### Development consent etc granted by the Order

**3.—**(1) Subject to the provisions of this Order and to the requirements the undertaker is granted development consent for the authorised development to be carried out in accordance with the approved plans.

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(a) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) Section 48 is amended by the Local Transport Act 2008 (c. 26), Pt 7 s.124(2).



(2) Subject to paragraph (3), each numbered work is to be situated on the corresponding numbered line or numbered area shown on the works plans.

(3) In constructing each numbered work, the undertaker may deviate from the corresponding numbered line shown on the works plans or within the corresponding numbered area shown on the works plans up to the limits of deviation.

### **Maintenance of authorised development**

4.—(1) Except to the extent that this Order or an agreement made under this Order provides otherwise and subject to the provisions of this Order and to the requirements, the undertaker is authorised to and may at any time maintain the authorised development.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

### **Operation of authorised development**

5. Subject to the provisions of this Order and to the requirements the undertaker may operate and use the generating station comprised in the authorised development.

### **Benefit of Order**

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to:

- (a) Work No. 7 in relation to which this Order has effect for the benefit of the undertaker and Northern Powergrid (Yorkshire) plc; and
- (b) Work No. 8 in relation to which this Order has effect for the benefit of the undertaker and NGET.

### **Consent to transfer benefit of Order**

7.—(1) The undertaker may—

- (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 in writing 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), 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) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is—
  - (i) a statutory undertaker; or
  - (ii) a local highway authority responsible for the highways within the Order land; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;

- (ii) any such claim has been made and has been compromised or withdrawn;
- (iii) compensation has been paid in final settlement of any such claim;
- (iv) payment of compensation into court in lieu of settlement of any such claim has taken place; or
- (v) it has been determined by the tribunal or court of competent jurisdiction in respect of any claim that no compensation is payable.

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

**8.—(1)** Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if--

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with any scheme of monitoring and attenuation of noise agreed with the relevant planning authority; or
  - (ii) is a consequence of the use of the authorised development 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 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

## PART 3

### Streets

**Street works**

**9.—(1)** The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may--

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and

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

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

(e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the person carrying out any works pursuant to paragraph (1) is not the street authority the provisions of sections 54 to 106 of the 1991 Act apply to any such works.

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

**10.**—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 4 (streets subject to permanent and temporary alteration of layout) in the manner specified in relation to that street in column (3) and in the case of temporary works as specified in column (2) of Part 2 of Schedule 4 in the manner specified in relation to that street in column (3).

(2) Regardless of the specific powers conferred by paragraph (1) but subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

(a) alter the level or increase the width of any kerb, footway, cycle track or verge;

(b) make and maintain passing place(s).

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of eight weeks beginning with the date on which the application was made, it is deemed to have granted consent.

(6) Paragraphs (3), (4) and (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

### **Construction and maintenance of new or altered means of access**

**11.**—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (access) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 5 (access) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article 10(1) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 5 (access) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

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

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

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

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

### **Temporary prohibition or restriction of use of streets**

**12.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or prohibit or restrict the use of 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 prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter, divert or prohibit or restrict the use of any street specified in columns (1) and (2) of Schedule 6 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(3) The undertaker 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.

(4) The undertaker must not temporarily stop up, alter, divert or prohibit or restrict the use of--

- (a) any street specified as mentioned in paragraph (2) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

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

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

### **Access to works**

**13.** The undertaker may, for the purposes of the authorised development—

- (a) form and layout the permanent means of access, or improve existing means of access, in the locations specified in Part 1 of Schedule 4 (streets subject to permanent and temporary alteration of layout);
- (b) form and layout the temporary means of access in the location specified in Part 2 of Schedule 4 (streets subject to permanent and temporary alteration of layout); and

(c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Public rights of way**

**14.**—(1) With effect from the date on which the first temporary footpath is available for use by members of the public (such date to be certified by the undertaker to the relevant planning authority):

(a) the section of the public right of way (being a footpath) shown marked with a solid pink line between points 1 and 2 on the access and rights of way plan is extinguished;

(b) a section of public right of way (being a footpath) shown marked with a solid green line between points 4 and 5 on the access and rights of way plan is created; and

(c) a section of public right of way (being a footpath) shown marked with a solid green line between points 2 and 6 on the access and rights of way plan is created.

(2) With effect from the date of the completion of commissioning, public rights of way (being footpaths) shown marked with a solid purple line between:

(a) points 1 and 4 on the access and rights of way plan; and

(b) points 5 and 6 on the access and rights of way plan  
are created.

(3) Subject to the provisions of this article, the undertaker may, in connection with the carrying out or maintenance of the authorised development, temporarily close each of the public rights of way specified in column (2) of Schedule 7 (public rights of way to be temporarily stopped up) to the extent described in column (3) of that Schedule.

(4) Prior to closing the footpath shown with a dashed pink line between points 7 and 8 on the access and rights of way plans, the undertaker must provide the second temporary footpath, and must maintain the second temporary footpath until the footpath shown with a dashed pink line between points 7 and 8 on the access and rights of way plans is available for use by the public.

### **Agreements with street authorities**

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

(a) the construction of any new street including any structure carrying the street;

(b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;

(c) the maintenance of the structure of any bridge or tunnel carrying a street;

(d) any alteration, diversion, prohibition or restriction in the use of a street authorised by this Order; or

(e) the carrying out in the street of any of the works referred to in article 11(1) (construction and maintenance of new or altered means of access).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)--

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) specify a reasonable time for the completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

## PART 4

### Supplemental powers

#### Discharge of water

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

(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, but must not be unreasonably withheld.

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

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(b).

(8) In this article--

(a) "public sewer or drain" means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

#### Protective work to buildings

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

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

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

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

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

(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 completion of commissioning.

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

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

(a) enter the building and any land within its curtilage; and

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

(5) Before exercising--

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

the undertaker 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), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 39 (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, following the completion of commissioning, first in 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) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

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

(11) In this article "protective works" in relation to a building means--

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised 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 the land**

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

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

(3) Any person entering land under this article on behalf of the undertaker--

- (a) must, if so required entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may 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,

but such consent must not be unreasonably withheld.

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

## **Removal of human remains**

**19.—**(1) In this article "the specified land" means the 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) 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 authorised development; 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 relevant local 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 must 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; or

(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; or

(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 is to be sent by the undertaker 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) is to be sent by the undertaker to the relevant local authority mentioned in paragraph (4).

(12) The removal 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.

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

(14) Section 25 of the Burial Act 1857<sup>(a)</sup> (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

## PART 5

### Powers of acquisition

#### Compulsory acquisition of land

**20.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it and may use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

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<sup>(a)</sup> 1857 c.81; section 25 is amended by the Criminal Justice Act 1982 (c.48.) s.46.

(2) As from the date on which a compulsory acquisition notice is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

(3) This article is subject to article 23 (compulsory acquisition of rights) and article 30 (temporary use of land for carrying out the authorised development).

### **Statutory authority to override easements and other rights**

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

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

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

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

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

(b) a breach of a restriction as to use of land arising by virtue of contract, authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the use of land arising by virtue of a contract.

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

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

### **Time limit for exercise of authority to acquire land compulsorily**

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

(a) no notice to treat may be served under Part 1 of the 1965 Act; and

(b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(a)</sup> (execution of declaration) as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 30 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph is to prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

**23.**—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 20 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column 1 of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land as are specified in column 2 of that Schedule.

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(a) 1981 c.66.

(3) Subject to section 8 of the 1965 Act (other provision as to divided land), as substituted by article 27 (acquisition of part of certain properties), where the undertaker acquires a right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

### **Private rights**

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

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act<sup>(a)</sup> (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker or Drax Power Limited are to be extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private right over land of which the undertaker takes temporary possession under this Order are to be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

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

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 32 (statutory undertakers) applies.

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(a) Section 11 is amended by Schedule 4 to the Acquisition of Land Act 1981 (c.67), Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c.71), the Church of England (Miscellaneous Provisions) Measure 2006 No. 1 Sch.5 para.12(1) and the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of rights over land,
  - (ii) the undertaker's appropriation of it,
  - (iii) the undertaker's entry onto it, or
  - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

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

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is to be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

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

**25.—**(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) is to apply as if this Order were a compulsory purchase order.

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

(3) In section 3 (preliminary notices), for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

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(a) 1981 c.66.

- (a) in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

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

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

### **Acquisition of subsoil only**

**26.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) and paragraph (1) of article 23 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 27 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

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

**27.**—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where--

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

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

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

(4) If such a counter-notice is served within that period, the question whether the owner is to be required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

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

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

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

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

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

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

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

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

(b) the material detriment is confined to a part of the land subject to the counter-notice,

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

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

(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

(b) the material detriment is not confined to a part of the land subject to the counter-notice,

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

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

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

### **Compulsory acquisition of land – incorporation of the mineral code**

28. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 (minerals) are incorporated into this Order subject to the modifications that—

(a) paragraph 8(3) is not incorporated; and

(b) for “the acquiring authority” substitute “the undertaker”.

### **Rights under or over streets**

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

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

(3) Paragraph (2) does not apply in relation to--

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

## Temporary use of land for carrying out the authorised development

30.—(1) The undertaker may, in connection with the carrying out of the authorised development--

(a) enter on and take temporary possession of:

(i) the land specified in column (1) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);

(b) remove any buildings and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any works specified in relation to that land in column (2) of Schedule 10, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

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

(a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of three years beginning with the date of the completion of commissioning; 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 final commissioning of the authorised development unless the undertaker has, before the end of that period, served 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 or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served 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 or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.

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

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

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

(a) acquiring new rights over any part of that land under article 23 (compulsory acquisition of rights); or

(b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 26 (acquisition of subsoil only).

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

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

(11) Nothing in this article prevents the taking of temporary possession of any land specified in Schedule 10 more than once.

### **Temporary use of land for maintaining the authorised development**

**31.** —(1) Subject to paragraph (2) the undertaker may--

(a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; 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 undertaker to take temporary possession of--

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

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

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker 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 provisions of this article.

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

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

### **Statutory undertakers**

**32.** Subject to the provisions of Schedule 12 (protective provisions), the undertaker may--

(a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference;

(b) extinguish or suspend the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plans and described in the book of reference; and

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<sup>(a)</sup> Section 13 is amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15).



- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

### **Apparatus and rights of statutory undertakers in streets subject to temporary prohibition or restriction**

**33.**—(1) Where a street is temporarily altered or diverted or its use is temporarily prohibited or restricted under article 11 (construction and maintenance of new or altered means of access) or article 12 (temporary prohibition or restriction of use of streets) , any statutory utility whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is temporarily altered or diverted or its use is temporarily prohibited or restricted under article 12 (temporary prohibition or restriction of use of streets) or article 11 (construction and maintenance of new or altered means of access), any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker 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 such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker 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.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus 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 in a cable is agreed, or is determined to be necessary, the consequential provision 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 paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) is to, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) does not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead--

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and

(b) the allowable costs must be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article--

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

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

### **Recovery of costs of new connections**

**34.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (apparatus and rights of statutory undertakers in streets subject to temporary prohibition or restriction) 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 undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 33, 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 undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 33 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

(4) In this article--

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003; and

"public utility undertaker" has the same meaning as in the 1980 Act.

## **PART 6**

### **Operations**

#### **Felling or lopping of trees**

**35.**—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, 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 development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using or maintaining the authorised development.

(2) Save in the case of emergency the undertaker must, not less than 14 days before entering any land pursuant to paragraph (1), serve notice of the intended entry on the owners and occupiers of the land.

(3) In carrying out any activity authorised by paragraph (1), 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.

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

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(a) 2003 c.21; there are amendments to section 151 that are not relevant to this Order.

## PART 7

### Miscellaneous and general

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

**36.**—(1) This article applies to--

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the authorised development; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, 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 prejudice the operation of any agreement to which this article applies.

(3) 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 such agreement so as to--

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

#### **Operational land for purposes of the 1990 Act**

**37.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land).

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

**38.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of--

- (a) the access and rights of way plans;
- (b) the works plans;
- (c) the land plans;
- (d) the book of reference;
- (e) the environmental statement;
- (f) the landscaping plan;
- (g) the combined heat and power assessment;
- (h) the indicative landscaping and biodiversity framework plan; and
- (h) the design and access statement.

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

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

## Arbitration

39. Any difference under any provision of this Order, unless otherwise provided for, is to 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 Secretary of State.

## Procedure in relation to certain approvals etc.

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

(2) Save for applications made pursuant to Schedule 11 (Procedure for discharge of requirements) and except as provided for in paragraph (3), if, within 28 days after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article, it has not notified the undertaker of its disapproval and the grounds of disapproval, it is to be deemed to have approved the application or request.

(3) Schedule 11 has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements and any document referred to in any requirement.

## Protective provisions

41. Schedule 12 (protective provisions) has effect.

## Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) 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 of the Interpretation Act 1978(a) (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

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

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

- (a) addressing it to that person by the description of "owner" or "occupier" (as the case may be) of the land (describing it); and

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

(b) either leaving it in the hands of the 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 to be taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

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

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

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

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

## SCHEDULE 1

Article 2

### AUTHORISED DEVELOPMENT AND APPROVED PLANS

#### PART 1

#### AUTHORISED DEVELOPMENT

In the County of North Yorkshire and the District of Selby—

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act being an electricity generating station with a nominal gross electrical output capacity of up to 448 MWe fuelled by coal and / or biomass with associated development, comprising:

##### **Work No. 1**

**Work No. 1A** – (the generating station site) development comprising:

- (a) Site raising and preparation;
- (b) Boiler house including boiler, coal bunkers, coal mills, biomass bunker, biomass mills, fans, air heaters, water and steam pipework;
- (c) Air and gas fans and ducts;
- (d) Flue gas treatment systems including flue gas desulphurisation, electrostatic precipitators, selective catalytic reduction;
- (e) Flue gas desulphurisation including limestone mills, absorber tower, gypsum dewatering system and associated storage facilities;
- (f) Stack / chimney including flue gas emissions monitors;
- (g) Steam turbine hall including steam turbine and generator, condenser, steam and water pipework, pumping and heating equipment,
- (h) Oxygen producing air separation units comprising air compressors, distillation and heat exchange equipment;
- (i) Molecular sieve adsorber units, cryogenic pumping systems and vaporisation units;
- (j) Oxygen storage tanks and vessels;
- (k) CO<sub>2</sub> gas processing unit comprising flue gas condenser, heat exchange equipment, molecular sieve adsorber units and CO<sub>2</sub> compressors;
- (l) Cooling water towers, water storage basin, pump house and pipe work;
- (m) Buildings housing main control room, electrical and control systems
- (n) Administration buildings including offices, canteen, welfare and visitor centre;
- (o) Maintenance buildings including workshop, warehouse and storage area;
- (p) Electrical switchgear buildings and transformer areas;
- (q) Demineralised water production, storage tanks and laboratory;
- (r) Industrial water and waste water treatment and conditioning plant;
- (s) Light fuel oil storage tanks and pump house;
- (t) Ash storage and handling equipment;
- (u) Fire brigade station and first aid treatment
- (v) Fire water pump house and equipment;
- (w) Auxiliary boiler;

- (x) Ammonia storage tanks;
- (y) Security gatehouse and weighbridges;
- (z) Rain water attenuation buffers;
- (aa) Bridges and crossings over Carr Dyke;
- (bb) Mechanical, electrical and water networks, pipework, cables, racks, infrastructure and instrumentation including connections between Work Nos 2, 3, 4 and 5, and parts of this Work No. 1A; and
- (cc) Equipment, buildings and modules ancillary to the generating station and its associated buildings and structures

**Work No. 1B** – (temporary laydown and construction) development comprising laydown and construction areas relating to the construction and maintenance of Work Nos. 1A, 2, 3, 4, 5, 6, 7 and 8

**Work No. 2** – (fuel intake, limestone and gypsum and fuel ash handling transportation infrastructure) development comprising:

- (a) Coal handling facilities including conveyors and storage, and biomass handling facilities including conveyors;
- (b) Fuel ash handling facilities, including conveyors;
- (c) Limestone conveyors;
- (d) Gypsum conveyors;
- (e) Materials handling systems electrical stations; and
- (f) Including any necessary works to existing infrastructure and buildings

**Work No. 3** – (fuel ash storage) development comprising fuel ash storage

**Work No. 4** – (electrical connections) development comprising an overground and underground, 132kV or 400kV electrical cable circuit and associated telemetry and electrical protection auxiliary cabling; and

**Work No. 5** – (water connections) development comprising:

- (a) Cooling water, potable water and sewerage connections; and
- (b) Cooling water pump house and associated infrastructure

**Work No. 6** – (jetty hardstanding area) development comprising hardstanding areas for unloading of equipment or materials, storage, parking and circulation adjacent to the existing jetty on the River Ouse

**Work No. 7** – (11kV diversion works) development comprising the underground diversion of an 11kV overhead electrical cable

**Work No. 8** – (substation infrastructure) development comprising:

- (a) Upgrading of existing bays and the preparation of new bays;
- (b) Extension of existing 400kV or 132kV busbars;
- (c) Installation of new 400kV or 132kV switchgear;

- (d) Cable trenching for 400kV or 132kV cables; and
- (e) Cable sealing ends at each high voltage connection between busbars and cables

and such other works within the Order limits necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works listed in this Part of this Schedule and which fall within the scope of the works assessed by the environmental statement including:

- (a) Site clearance, vegetation removal, demolition of existing structures and buildings, soil stripping and storage, bunds, embankments and earthworks;
- (b) Drainage works, culverts and wing walls;
- (c) Temporary de-watering and drainage facilities;
- (d) Lighting;
- (e) Site fencing, gates, and CCTV;
- (f) Landscaping, habitat creation and ecological mitigation;
- (g) Site compounds;
- (h) Construction-related buildings, structures, laydown, storage, plant, machinery, utilities, welfare facilities and haulage roads;
- (i) Electricity, water, wastewater, waste, gas, telecommunications and other services;
- (j) Site roads and parking areas, site access works, new site access points, and works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (k) Temporary and permanent footpaths.

## PART 2

### APPROVED PLANS

Plan name	Plan reference or number
Works plans	CPL Works Plan Sheet 1 v0 CPL Works Plan Sheet 2 v0 CPL Works Plan Sheet 3 v0 CPL Works Plan Sheet 4 v0
Access and rights of way plans	CPL ARoW Plan Sheet 1 v0 CPL ARoW Plan Sheet 2 v0 CPL ARoW Plan Sheet 3 v0 CPL ARoW Plan Sheet 4 v0



## SCHEDULE 2

## Article 2

### REQUIREMENTS

#### **Commencement of the authorised development**

1. (1) The authorised development may not commence later than the date that is five years from the date on which this Order comes into force.
- (2) The authorised development may not commence unless the undertaker has given the relevant planning authority 14 days' notice of its intention to commence the authorised development.

#### **Notice of start of commissioning**

2. (1) Notice of the intended start of commissioning must be given to the relevant planning authority prior to such start and in any event within 14 days from the date that commissioning is started.

#### **Notice of completion of commissioning**

3. Notice of the intended completion of commissioning must be given to the relevant planning authority prior to such completion.

#### **Detailed design**

4. (1) No part of the authorised development comprised in Work No. 1A (the generating station) other than site raising may commence until details of the following for that part have been submitted to and approved by the relevant planning authority in consultation with the local highway authority:

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings;
- (b) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes and pedestrian facilities and routes;
- (c) drainage design, storage tanks and silos; and
- (d) finished floor levels.

- (2) No part of the authorised development comprised in Work No. 1B (temporary laydown and construction) other than site raising may commence until details of the following for that part have been submitted to and approved by the relevant planning authority in consultation with the local highway authority:

- (a) the layout, including areas for hardstanding, storage of materials, loading and unloading, vehicle parking and turning facilities; and
- (b) access points.

- (3) No part of the site raising comprised in Work Nos. 1A and 1B may commence until details of the following for that part have been submitted to and approved by the relevant planning authority:

- (a) the existing site level;
- (b) the material to be used for site raising;
- (c) the extent of the area to be raised; and
- (d) the finished site level.

- (4) No part of the authorised development comprised in Work No. 2 (fuel intake, limestone and gypsum and fuel ash handling transportation infrastructure) may commence until details of the following for that part have been submitted to and approved by the relevant planning authority –

- (a) the routes of the conveyors and other plant for the transport of fuel, limestone, gypsum and fuel ash; and

(b) the siting, layout, scale and external appearance of any permanent buildings, structures, conveyors or other plant.

(5) No part of the authorised development comprised in Work No. 3 (fuel ash storage) may commence until details of the following for that part have been submitted to and approved by the relevant planning authority –

(a) the extent of the area to be used for the storage of fuel ash; and

(b) the methods of storage.

(6) No part of the authorised development comprised in Work No. 4 (electrical connections) may commence until details of the following for that part have been submitted to and approved by the relevant planning authority –

(a) the substation selected for the electrical connection;

(b) the route and method of installation of the electrical cable; and

(c) the siting, layout, scale and external appearance of any permanent buildings, structures or above ground apparatus.

(7) No part of the authorised development comprised in Work No. 5 (water connections) may commence until details of the following for that part have been submitted to and approved by the relevant planning authority –

(a) the route and method of installation of the water connections and pipelines; and

(b) the siting, layout, scale and external appearance of any permanent buildings, structures or plant.

(8) No part of the authorised development comprised in Work No. 6 (the jetty hardstanding area) may commence until details of the following for that part have been submitted to and approved by the relevant planning authority in consultation with the local highway authority:

(a) the layout, including areas for hardstanding, storage of materials, loading and unloading, vehicle parking and turning facilities; and

(b) access points.

(9) No part of the authorised development comprised in Work No. 7 (the 11kV diversion works) may commence until details of the following for that part have been submitted to and approved by the relevant planning authority:

(a) the route and method of installation of the electrical cable; and

(b) the siting, layout, scale and external appearance of any permanent buildings, structures or above ground apparatus..

(10) No part of the authorised development comprised in Work No. 8 (substation infrastructure) may commence until details of the following for that part have been submitted to and approved by the relevant planning authority:

(a) the substation selected for the electrical connection;

(b) the route and method of connecting the electrical cable to the selected substation; and

(c) the siting, layout, scale and external appearance of any permanent buildings, structures or above ground apparatus.

(11) All details submitted under sub-paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), an (10) must, where relevant, be in accordance with the design and scale parameters set out in Table 5.1 in the design and access statement.

(12) Work Nos. 1A, 1B, 2, 3, 4, 5, 6, 7 and 8 must be carried out in accordance with the approved details.

### **Provision of landscaping**

5.(1) The generating station may not be brought into commercial use until a detailed landscaping scheme for that part has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must include details of all proposed hard and soft landscaping works, including—

- (a) shrub and tree planting, including between Work No. 1A and Drax Augustinian Priory Scheduled Monument;
- (b) the treatment of hard surfaced areas; and
- (c) an implementation timetable.

(3) The scheme submitted and approved must be in accordance with the indicative landscaping and biodiversity framework plan.

### **Implementation and maintenance of landscaping**

6.(1) All landscaping works must be carried out in accordance with the landscaping scheme (including the implementation timetable) approved under requirement 5 unless otherwise agreed with the relevant planning authority.

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed with the relevant planning authority.

(3) The undertaker must implement an annual landscaping maintenance plan during the operation and decommissioning of the authorised development unless otherwise agreed with the relevant planning authority.

### **Public rights of way diversions**

7.(1) No part of the authorised development may commence until a written public rights of way management plan for any section(s) of public rights of way shown to be extinguished, diverted or temporarily closed on the access and rights of way plans for that part has been submitted to and, after consultation with the local highway authority, approved in writing by the relevant planning authority.

(2) The public rights of way management plan must thereafter be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the local highway authority.

### **External lighting – construction**

8.(1) No part of the authorised development may commence until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of requirement no. 27) has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must include measures to minimise and otherwise mitigate any artificial light emissions during construction of the authorised development.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

### **External lighting – operation**

9.(1) The generating station may not be brought into commercial use until a scheme for all permanent external lighting to be installed during operation (with the exception of the aviation warning lighting required by virtue of requirement no. 27) has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must include measures to minimise and otherwise mitigate any artificial light emissions during operation of the authorised development.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

### **Highway accesses**

10.(1) No part of the authorised development may commence until details of the siting, design and layout (including visibility splays and surfacing) of any new or modified permanent or temporary means of access between any part of the Order land and the public highway to be used by vehicular traffic, or any alteration to an

existing means of access to a public highway used by vehicular traffic, has, for that part, been submitted to and, after consultation with the local highway authority, approved by the relevant planning authority.

(2) The accesses to the public highway must be constructed in accordance with the approved details unless otherwise agreed with the relevant planning authority in consultation with the local highway authority.

(3) The authorised development may not be brought into commercial use until any permanent accesses to the public highway have been constructed or modified (as relevant).

### **Means of enclosure**

11.(1) No part of the authorised development may commence until details of any proposed temporary means of enclosure (including a programme for the removal of all temporary means of enclosure), have, for that part, been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction of the authorised development.

(3) The generating station may not be brought into commercial use until details of any proposed permanent means of enclosure, have, for that part, been submitted to and approved by the relevant planning authority.

(4) The authorised development may not be brought into commercial use until any approved permanent means of enclosure has been completed.

(5) The authorised development must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(6) In this requirement, “means of enclosure” means fencing, walls or other means of boundary treatment and enclosure.

### **Surface and foul water drainage**

12.(1) No part of the authorised development may commence until details of the temporary surface and foul water drainage systems (including means of pollution control, in accordance with the construction environmental management plan), have, for that part, been submitted to, and following consultation with the Environment Agency, approved by the relevant planning authority.

(2) Details of the permanent surface and foul water drainage systems (including a programme for their implementation) must be submitted to and approved by the relevant planning authority prior to the start of construction of any part of those systems.

(3) The details submitted pursuant to sub-paragraphs (1) and (2) must be in accordance with the principles set out in the environmental statement.

(4) The temporary and permanent surface and foul water drainage systems must each be constructed in accordance with the relevant approved details unless otherwise agreed with the relevant planning authority.

(5) The authorised development may not be brought into commercial use until the permanent surface and foul water drainage systems have been constructed.

### **Flood risk mitigation**

13.(1) No part of the authorised development may commence until a scheme for the mitigation of flood risk during the construction and operation, has, for that part, been submitted to, and following consultation with the Environment Agency, been approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the principles set out in the environmental statement.

(3) The flood risk mitigation must be constructed in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(4) The authorised development may not be commissioned until the flood risk mitigation has been constructed.

(5) The approved flood risk mitigation scheme must be maintained throughout the construction and operation of the authorised development.

### **Contaminated land and groundwater**

14.(1) No part of the authorised development may commence until a scheme to deal with the contamination of land (including groundwater), which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, following consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme submitted and approved—

(a) must be in accordance with the principles set out in the environmental statement;

(b) may be included in the construction environmental management plan.

(3) The scheme must include an investigation and assessment report to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(4) The authorised development, including any remediation, must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

### **Archaeology**

15.(1) No part of the authorised development may commence until a scheme of archaeological investigation for that part has been submitted to and, following consultation with the relevant archaeological body, approved by the relevant planning authority

(2) The scheme submitted and approved must be in accordance with the principles set out in the environmental statement.

(3) The scheme must identify areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified

(4) Any archaeological investigations implemented must be carried out –

(a) in accordance with the approved scheme, and

(b) by a suitably qualified person or organisation approved by the relevant planning authority unless otherwise agreed with the relevant planning authority.

### **Biodiversity management plan**

16.(1) The authorised development may not be commissioned until a biodiversity management plan has been submitted to and, following consultation with Natural England, approved by the relevant planning authority.

(2) The plan submitted and approved must—

(a) be in accordance with the survey results and mitigation and enhancement measures included in the environmental statement; and

(b) include an implementation timetable and details relating to maintenance and management.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

### **European protected species**

17.(1) No part of the authorised development may commence until further survey work for that part has been carried out to establish whether any European protected species is present on any of the land affected, or likely to be affected, by that part of the authorised development.

(2) Where a protected species is shown to be present, no authorised development of that part may be begun until, after consultation with Natural England, a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority.

(3) The authorised development must be implemented in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

### **Construction environmental management plan**

18.(1) No part of the authorised development may commence until a construction environmental management plan has, for that part, been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in the environmental statement and incorporate;

(a) a code of construction practice, specifying measures designed to minimise the impacts of construction works;

(b) a scheme for the control of any dust, smoke or steam emissions;

(c) a piling concept document; and

(d) a scheme for the notification of any significant construction impacts on local residents and for handling any complaints received from local residents relating such impacts during the construction of the authorised development.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

### **Construction traffic routing and travel plan**

19.(1) No part of the authorised development may commence until a construction traffic routing and travel plan has, for that part, been submitted to and, after consultation with the local highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must include—

(a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;

(b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the anticipated number of abnormal loads to be delivered by road and measures to mitigate traffic impact;

(c) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment and any temporary removal of street furniture;

(d) measures to encourage the use of sustainable transport modes by construction personnel in order to minimise the overall traffic impact; and

(e) details of parking for construction personnel within the construction site(s).

(3) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site(s), indicating to drivers the approved routes for traffic entering and leaving the construction site(s).

(4) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the local highway authority.

### **Construction hours**

20.(1) Subject to sub-paragraph (2) construction work relating to the authorised development, including the delivery or removal of materials, plant and machinery, must not take outside the hours of-

(a) 0700 and 1900 hours on Monday to Friday; and

(b) 0700 and 1300 hours on a Saturday.

(2) The restrictions in sub-paragraph (1) do not apply to construction work or the delivery or removal of materials, plant and machinery or the delivery of abnormal indivisible loads, where these-

(a) do not exceed a noise limit of 50dB(A) at the Order limits;

(b) are carried out with the prior approval of the relevant planning authority under section 61 'Prior consent for work on construction sites' of the Control of Pollution Act 1974; or

(c) are associated with an emergency.

(3) Sub-paragraph (1) does not preclude-

(a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0630 to 0700 and a shut-down period from 1300 to 1330 on a Saturday; or

(b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

(4) In this requirement "emergency" means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

### **Accumulations and deposits**

21.(1) No part of the authorised development other than site raising may commence until a scheme for the management of relevant accumulations and deposits for that part during construction has been submitted to and approved by the relevant planning authority.

(2) The approved scheme must be implemented before and maintained during the construction of that part of the authorised development unless otherwise agreed with the relevant planning authority.

(3) The authorised development may not be commissioned until a scheme for the management of accumulations and deposits that may arise during operation has been submitted to and approved by the relevant planning authority.

(4) The approved scheme must be implemented before the authorised development is brought into commercial use and maintained during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(5) In paragraph (1), "relevant accumulations and deposits" means accumulations and deposits—

(a) which may occur during the construction and operation of the authorised development, and

(b) the effects of which may be noticeable from outside the Order limits.

### **Restoration of land used temporarily for construction**

22.(1) The authorised development may not be brought into commercial use until a scheme for the restoration of any land within the Order limits which has been used temporarily for construction has been submitted to and approved by the relevant planning authority.

(2) The land must be restored within three years of the authorised development being brought into commercial use (or such other period as the relevant planning authority may approve), in accordance with—

(a) the restoration scheme approved in accordance with paragraph (1),

(b) the landscaping scheme approved in accordance with requirement 5, and

(c) the biodiversity management plan approved in accordance with requirement 16.

### **Operational traffic routing and travel plan**

23.(1) The authorised development may not be brought into commercial use until an operational traffic routing and travel plan has been submitted to and, following consultation with the local highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must include details of –

(a) the routes to be used for the transport of bulk materials to and from the authorised development;

(b) measures to encourage the use of sustainable transport modes to and from the authorised development by operational staff; and

(c) the responsibility for the implementation and monitoring and review of those measures.

(3) The plan must be implemented as approved before the authorised development is brought into commercial use and must be maintained during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

### **Combined heat and power**

24.(1) The authorised development may not be brought into commercial use until the relevant planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems.

(2) The undertaker must maintain such space and routes during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(3) On the date that is 12 months after the authorised development is first brought into commercial use, the undertaker must submit to the planning authority for its approval a report (“the CHP review”) updating the combined heat and power assessment.

(4) The CHP review submitted and approved must—

(a) consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission; and

(b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development.

(5) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review unless otherwise agreed with the relevant planning authority.

(6) On each date during the lifetime of the authorised development that is five years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (4) and (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (3).

(8) In sub-paragraph (3), “the combined heat and power assessment” means the document certified as the combined heat and power assessment by the Secretary of State for the purposes of this Order under article 38 (certification of plans etc.).

### **Waste management on site – construction and operational wastes**

25.(1) No part of the authorised development other than site raising may commence until a construction site waste management plan for that part has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in the environmental statement.



- (3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.
- (4) The authorised development may not be brought into commercial use until an operational waste management plan has been submitted to and approved by the relevant planning authority.
- (5) The plan submitted and approved must be in accordance with the principles set out in the environmental statement.
- (6) The plan must be implemented as approved before the authorised development is brought into commercial use unless otherwise agreed with the relevant planning authority.

### **Decommissioning**

- 26.(1) Within 12 months of the date that the undertaker decides to decommission the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning scheme.
- (2) No decommissioning works may be carried out until the relevant planning authority has approved the scheme.
  - (3) The scheme submitted and approved must be in accordance with the principles set out in the environmental statement.
  - (4) The scheme submitted and approved must include details of—
    - (a) the buildings to be demolished;
    - (b) the means of removal of the materials resulting from the decommissioning works;
    - (c) the phasing of the demolition and removal works;
    - (d) any restoration works to restore the Order land to a condition agreed with the relevant planning authority;
    - (e) the phasing of any restoration works;
    - (f) a timetable for the implementation of the scheme.
  - (5) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

### **Aviation warning lighting**

- 27.(1) No part of the authorised development that requires an aviation warning light may commence until details of the aviation warning lighting to be installed for that part have been submitted to, and following consultation with the Civil Aviation Authority, approved by the relevant planning authority.
- (2) All cranes used in the construction of the authorised development must comply with applicable Civil Aviation Authority guidance with respect to aviation warning lighting.
  - (3) The aviation warning lighting approved pursuant to sub-paragraph (1) must be installed and operated in accordance with the approved details.

### **Air safety**

28. No part of the authorised development other than site raising may commence until details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

### **Carbon capture and storage consents**

- 29.(1) No part of the authorised development other than site raising may commence until the undertaker has provided evidence to the relevant planning authority that the necessary consents required to enable the construction and operation of the following have been granted or made (as relevant):
- (a) the onshore and offshore carbon dioxide pipelines and other apparatus required to connect the authorised development to an appropriate site or sites for the storage of the carbon dioxide captured during the operation of the authorised development; and

(b) the storage at that site or sites of the carbon dioxide captured during the operation of the authorised development.

(2) In sub-paragraph (1), "necessary consents" means such of the following as are required for the development or operations described in sub-paragraphs (1)(a) and (1)(b) at the date of the submission of the evidence pursuant to sub-paragraph (1):

- (a) any development consent required by section 31 of the 2008 Act;
- (b) any carbon dioxide storage licence required by section 17 of the Energy Act 2008(a);
- (c) any marine licence required by section 65 of the Marine and Coastal Access Act; and
- (d) any pipeline works authorisation required by section 14 of the Petroleum Act 1998

or such other licence, authorisation or consent as may respectively replace the licences, authorisations and consents listed in sub-paragraphs (a) to (d) inclusive.

(3) No part of the authorised development other than site raising may commence until the undertaker has provided evidence to the relevant planning authority that any environmental permit required by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010 in relation to the authorised development has been issued.

#### **Requirement for written approval**

30. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

#### **Changes approved by the relevant planning authority**

31. Where the words 'unless otherwise approved by the relevant planning authority' appear in requirements 1 to 29, any such approval may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of that authority that the subject matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

#### **Amendments to approved details**

32. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

#### **Interpretation of this Schedule**

33. In this Schedule--

“commence”, unless otherwise provided, means beginning to carry out any material operation (as defined by Section 155 of the 2008 Act) forming the relevant part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, the preparation of facilities for the use of the contractor, the provision of temporary means of enclosure and site security for construction, the temporary display of site notices or advertisements and any other works agreed by the planning authority and “commencement” is to be construed accordingly;

“site raising”, means the works included in Work No. 1A(a), Work No. 1A(aa) and such site access works, site raising and hardstanding as are to take place within Work No. 1B;

"European protected species" has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010.

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
In the District of Selby	New Road	Works for the installation and maintenance of Work No. 4 within the limits of deviation for Work No. 4
In the District of Selby	New Road	Works to widen the carriageway so as to permit two-way passing traffic and to strengthen the existing carriageway on that part of the street hatched blue between the points marked 11 and 12 on the access and rights of way plans
In the District of Selby	New Road	Works for the provision of a new temporary access comprising part of Work. No. 1B at the point marked 13 on the access and rights of way plans
In the District of Selby	New Road	Works for the provision of a new permanent access comprising part of Work. No. 1B at the point marked 14 on the access and rights of way plans
In the District of Selby	New Road	Works for the provision of a new temporary access comprising part of Work. No. 1B at the point marked 15 on the access and rights of way plans
In the District of Selby	New Road / Private road	Works for the improvement of an existing access on New Road at the point marked 16 on the access and rights of way plans, for the creation of two new accesses at the point marked 17 on the access and rights of way plans and to improve an existing access at the point marked 18 on the access and rights of way plans

In the District of Selby	Pear Tree Avenue	Works for the provision of a new temporary access comprising part of Work. No. 1B at the point marked 19 on the access and rights of way plans
In the District of Selby	Pear Tree Avenue	Works for the installation and maintenance of Work No. 7 within the limits of deviation for Work No. 7

SCHEDULE 4

Article 10

STREETS SUBJECT TO PERMANENT AND TEMPORARY ALTERATION OF LAYOUT

PART 1—PERMANENT ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the District of Selby	New Road	Creation of new access at the point marked 14 on the access and rights of way plans to provide permanent access to Work No. 1B
In the District of Selby	New Road	Widening of the carriageway so as to permit two-way passing traffic and strengthening the existing carriageway on that part of the street hatched blue between the points marked 11 and 12 on the access and rights of way plans
In the District of Selby	New Road / Private road	Works to existing access on New Road at the point marked 16 on the access and rights of way plans, creation of two new accesses on the private road at the point marked 17 on the access and rights of way plans and works to existing access on the private road at the point marked 18 on the access and rights of way plans

PART 2—TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the District of Selby	New Road	Creation of new access at the point marked 13 on the access and rights of way plans including the lowering

		of the levels of the kerb to provide temporary access to Work No. 1B
In the District of Selby	New Road	Creation of new access at the point marked 15 on the access and rights of way plans to provide temporary access to Work No. 1B
In the District of Selby	Pear Tree Avenue	Creation of new access at the point marked 19 on the access and rights of way plans to provide temporary access to Work No. 1B

SCHEDULE 5

Article 11

ACCESS

PART 1 – THOSE PARTS OF THE ACCESSES TO BE MAINTAINED AT THE PUBLIC EXPENSE

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Selby	New Road	Length of New Road to be improved shown hatched blue between the points marked 11 and 12 on the access and rights of way plans

PART 2 – THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of access</i>
In the District of Selby	New Road	New access hatched red at the point marked 14 on the access and rights of way plans
In the District of Selby	New Road / Private road	Existing access on to New Road hatched red at the point marked 16 on the access and rights of way plans, two new accesses at the point marked 17 on the access and rights of way plans and existing access at the point marked 18 on the access and rights of way plans



PART 3 – THOSE WORKS TO RESTORE TEMPORARY ACCESSES WHICH WILL BE  
MAINTAINED BY THE STREET AUTHORITY

<i>(1)</i>  <i>Area</i>	<i>(2)</i>  <i>Street</i>	<i>(3)</i>  <i>Description of relevant part of access</i>
In the District of Selby	New Road	Works to remove temporary new access at the point marked 13 on the access and rights of way plans
In the District of Selby	New Road	Works to remove temporary new access at the point marked 15 on the access and rights of way plans
In the District of Selby	Pear Tree Avenue	Works to remove temporary new access at the point marked 19 on the access and rights of way plans

SCHEDULE 6

Article 12

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of temporary prohibition or restriction on use of street and its extent</i>
In the District of Selby	New Road	Temporary closure, required for works to the street, of the length of New Road between the points marked 11 and 12 on the access and rights of way plans
In the District of Selby	New Road	Temporary closure of the length of New Road within the limits of deviation for Work No. 4 and required for the carrying out of Work No. 4
In the District of Selby	New Road	Temporary closure of part of New Road at the points marked 13, 14, 15 and 16 on the access and rights of way plans required for the construction or improvement of access points
In the District of Selby	Pear Tree Avenue	Temporary closure of part of Pear Tree Avenue within the limits of deviation for Work No. 7 and required for the carrying out of Work No. 7
In the District of Selby	New Road	Temporary closure of part of Pear Tree Avenue at the point marked 19 on the access and rights of way plans required for the construction of an access point

SCHEDULE 7

Article 14

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1)</i>  <i>Area</i>	<i>(2)</i>  <i>Public right of way to be temporarily stopped up</i>	<i>(3)</i>  <i>Extent of stopping up</i>
In the District of Selby	Footpaths 35.6/11/1 and 35.47/ 10/1 shown marked with a solid blue line on the access and rights of way plans	Between points 2 and 9 on the access and rights of way plans
In the District of Selby	Footpath 35.47/1/1 shown marked with a solid blue line on the access and rights of way plans	Between points 7 and 8 on the access and rights of way plans

SCHEDULE 8

Article 23

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

1. In this Schedule 8 a reference to the infrastructure relating to a Work No. is a reference to the development, infrastructure or equipment (as relevant) listed in Part 1 of Schedule 1 (authorised development and approved plans) in relation to the relevant Work No.

(1)	(2)
<i>Number of land shown on the land plans</i>	<i>Rights etc which may be acquired</i>
5, 6, 7, 8, 9, 10, 11, 12, 13 and 14	The right for the undertaker and all persons authorised on its behalf to enter, with or without vehicles, plant and machinery for all purposes in connection with the construction, installation and use of the Work No. 2 infrastructure together with the right to install, retain, use, maintain, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve the Work No. 2 infrastructure.
1, 2, 3 and 4	The right for the undertaker and all persons authorised on its behalf to enter, with or without vehicles, plant and machinery for all purposes in connection with the transport, deposition, storage and removal of ash, together with the right to transport, deposit, store and remove ash arising from the authorised development, and to carry out any ancillary earthworks and operations.
32, 33, 35, 36, 37, 38, 42, 43, 44, 46, 53, 54, 55, 56, 60	<p>The right for the undertaker and all persons authorised on its behalf to enter, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation and use of the Work No. 4 infrastructure, together with the right to install, retain, use, maintain, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve the cables and other apparatus.</p> <p>The right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
46, 49, 50, 51, 52 53, 54, 55, 56, 57, 58, 63, 64	The right for the undertaker and all persons authorised on its behalf to enter, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation and use of the Work No. 5 infrastructure, together with the right to install, retain, use, maintain, inspect, repair, adjust, alter, remove, refurbish,

	<p>reconstruct, replace and improve the Work No. 5 infrastructure.</p> <p>The right to prevent any works on or uses of the land which may interfere with or damage the Work No. 5 infrastructure, or interfere with or obstruct access from and to the Work No. 5 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
26, 28, 29, 30 and 31	<p>The right for the undertaker and all persons authorised on its behalf to enter, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation and use of the Work No. 7 infrastructure, together with the right to install, retain, use, maintain, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve the Work No. 7 infrastructure.</p> <p>The right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
34, 39, 40 and 41	<p>The right for the undertaker and all persons authorised on its behalf to enter, with or without vehicles, plant and machinery for all purposes in connection with the Work No. 8 infrastructure together with the right to install, retain, use, maintain, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve the Work No. 8 infrastructure.</p>
33, 50, 51 and 54	<p>A pedestrian and vehicular right of way for the undertaker and all persons authorised on its behalf for all purposes connected with the construction, operation, maintenance and decommissioning of the authorised development.</p>
5	<p>A pedestrian and vehicular right of way for the undertaker and all persons authorised on its behalf for all purposes connected with emergency access or egress required in relation to the construction, operation, maintenance and decommissioning of the authorised development.</p>

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS  
FOR CREATION OF NEW RIGHTS

*Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973<sup>(a)</sup> is to have effect subject to the modifications set out in sub-paragraph (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

(a) for the words "land is acquired or taken" substitute the words "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for the words "acquired or taken from him" substitute the words "over which the right is exercisable or

the restrictive covenant enforceable".

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

(a) for the word "part" in paragraph (a) and (b) substitute the words "a right over or restrictive covenant affecting land consisting";

(b) for the word "severance" substitute the words "right or restrictive covenant over or affecting the whole of the park or garden";

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(a) 1973 c. 26.

(c) for the words "part proposed" substitute the words "right or restrictive covenant proposed"; and

(d) for the words "part is" substitute the words "right or restrictive covenant is".

*Application of the 1965 Act*

**3.**—(1) The 1965 Act is to have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired; or

(b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act is to apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

**4.** For section 7 of the 1965 Act (measure of compensation) substitute the following section—

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

conferred by this or the special Act."

**5.** For section 8 of the 1965 Act (provisions as to divided land) substitute the following section—

"8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging

to a house ("the relevant land")—

(a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal ("the tribunal"); and

(b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—

(i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or

(ii) where the land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

The White Rose CCS (Generating Station) Order 201[●] ("the Order") is to, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is to be deemed to authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is to be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but

nothing in this subsection prejudices any other power of the authority to withdraw the notice."

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

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are to be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

**7.** Section 11 of the 1965 Act (powers of entry) is to be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is to be deemed for this purpose to have been created on that date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is to be modified correspondingly.

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



**9.** Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is to be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 10

Article 30

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Number of land shown on the land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
Plots 17, 18, 19, 20 and 21	Temporary use as laydown, construction compound and similar uses required to facilitate construction of Work Nos. 1A, 2, 4, 5, 7 and 8
Plot 22	Temporary use to carry out works to the street and to facilitate the construction of new accesses
Plots 23, 24, 25 and 27	Temporary use as laydown, construction compound and similar uses required to facilitate construction of Work Nos. 1A, 2, 4, 5, 7 and 8
Plots 45 and 47	Temporary use as laydown, construction compound and similar uses required to facilitate construction of Work Nos. 1A, 2, 4, 5, 7 and 8
Plot 48	Temporary use as laydown, construction compound and similar uses required to facilitate construction of Work Nos. 1A, 2, 4, 5, 7 and 8
Plots 59, 61, 62 and 65	Temporary use as laydown, construction compound and similar uses required to facilitate construction of Work Nos. 1A, 2, 4, 5, 7 and 8
Plots 66, 67, 68 and 69	Temporary use as jetty and laydown area

## PROCEDURE FOR DISCHARGE OF REQUIREMENTS

**Applications made under requirements**

1. (1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of their decision on the application within a period of eight weeks beginning with:

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to sub-paragraph (3), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where:

- (a) an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order; and
- (b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and
- (c) such application is accompanied by a report that considers it likely that the subject matter of such application will give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved,

then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

**Further information and consultation**

2. (1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required the relevant planning authority must, within fourteen business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within two business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within two business days of receipt of such a request and in any event within twenty-one days of receipt of the application.

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is to be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

**Fees**

3. (1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee contained in regulation 16(1)(b) of the Town and Country Planning (Fees for

Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to that authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of:

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within eight weeks from the date on which it is received unless:
  - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
  - (ii) a longer period of time for determining the application has been agreed pursuant to sub-paragraph 1(c) of this Schedule.

## **Appeals**

4. (1) The undertaker may appeal in the event that:

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority does not give notice of its decision to the undertaker within the period specified in paragraph 1;
- (c) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows:

- (a) The undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;
- (b) The Secretary of State is to appoint a person within ten business days of receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the "start date" for the purposes of this sub-paragraph (2);
- (c) The relevant planning authority and the requirement consultee must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) The appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within fifteen business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

The appointment of the person pursuant to paragraph sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

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(a) S.I. 2012/2920. There are amendments to those Regulations which are not relevant to this Order.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five (5) business days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraph (2)(c)-(e).

(5) On an appeal under this paragraph, the appointed person may-

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (Requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(10) The appointed person may or may not be a member of the Planning Inspectorate but must be a qualified town planner of at least ten years experience.

(11) Save where a direction is given pursuant to sub-paragraph 12 requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replace it.

## **Interpretation of Schedule 11**

5. In this Schedule 11:

"business day" means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971;

"requirement consultee" means any body named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.

## PROTECTIVE PROVISIONS

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE  
UNDERTAKERS**Application**

1. The following provisions have effect for the protection of the undertakers referred to in this Schedule, unless otherwise agreed in writing at any time between the undertaker and the utility undertaker concerned.

**Interpretation**

2. In this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility 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), belonging to or maintained by that electricity undertaker for the purposes of electricity supply;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by that 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 water 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 Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011; 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 in each case 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, 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;

“pipeline” means the whole or any part of a pipeline belonging to or maintained by a utility undertaker and includes any ancillary works and apparatus;

“plan” includes a section and description of the works to be executed;

“utility undertaker” means—

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

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

### **On-street apparatus**

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

### **Acquisition of apparatus**

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

### **Removal of apparatus**

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under 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 utility 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 undertaker requires the removal of any apparatus placed in that land, it must give the utility undertaker in question written notice of that requirement, together with a plan of the work proposed.

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

(4) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 39 (*arbitration*), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the utility 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, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

### **Retained apparatus: protection**

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

(2) Those works are to be executed only in accordance with the plan submitted under subparagraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility 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 a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

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

(5) Nothing in this paragraph precludes the undertaker 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, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

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

### **Cathodic protection testing**

7. Where in the reasonable opinion of the utility undertaker—

(a) the authorised development might interfere with the existing cathodic protection forming part of a pipeline; or

(b) a pipeline might interfere with the proposed or existing cathodic protection forming part of the authorised development,

the utility undertaker to whom the pipeline belongs, or who maintains that pipeline, and the undertaker must co-operate in undertaking the tests which the utility undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

### **Expenses**

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an utility undertaker the reasonable expenses reasonably incurred by that utility undertaker in, or in connection with—

(a) the inspection, removal, alteration or protection of any apparatus; or

(b) the construction of any new apparatus,

which may be required in consequence of the execution of any such works as are required under this Schedule.

(2) The value of any apparatus removed under the provisions 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 Schedule—

(a) apparatus of a 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 situated, 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 utility undertaker or, in default of agreement, is not determined by arbitration in accordance with article 39 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under 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 utility 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 pipe or 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 a utility 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 utility 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.

### **Co-operation**

9. Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under sub-paragraph 5(2)) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 6(2), the utility undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development; and each utility undertaker must use its reasonable endeavours to co-operate with the undertaker for that purpose.

### **Arbitration**

10. Any difference or dispute arising between the undertaker and a utility undertaker under this Schedule is, unless otherwise agreed in writing between the undertaker and that utility undertaker, to be determined by arbitration in accordance with article 39 (*arbitration*).

## **EXPLANATORY NOTE**

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

This Order authorises Capture Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a coal and biomass fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 38 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at [●].