

**2015 No. 1570**

**INFRASTRUCTURE PLANNING**

**The Progress Power (Gas Fired Power Station) Order 2015**

*Made* - - - - *23rd July 2015*

*Coming into force* - - *14th August 2015*

**CONTENTS**

**PART 1**

**PRELIMINARY**

1. Citation and commencement
2. Interpretation

**PART 2**

**PRINCIPAL POWERS**

3. Development consent etc. granted by the Order
4. Maintenance of authorised development
5. Operation of authorised development
6. Benefit of the Order
7. Guarantees in respect of payment of compensation
8. Application and modification of legislative provisions

**PART 3**

**STREETS**

9. Power to alter layout, etc., of streets
10. Street works
11. Construction and maintenance of new or altered means of access
12. Temporary prohibition or restriction of use of streets
13. Access to works
14. Agreements with street authorities

**PART 4**

**SUPPLEMENTAL POWERS**

15. Discharge of water
16. Authority to survey and investigate the land
17. Removal of human remains

PART 5  
POWERS OF ACQUISITION

18. Compulsory acquisition of land
19. Statutory authority to override easements and other rights
20. Time limit for exercise of authority to acquire land compulsorily
21. Compulsory acquisition of rights etc.
22. Private rights
23. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
24. Acquisition of subsoil only
25. Acquisition of part of certain properties
26. Rights under or over streets
27. Temporary use of land for carrying out the authorised development
28. Temporary use of land for maintaining the authorised development
29. Statutory undertakers
30. Apparatus and rights of statutory undertakers in streets subject to temporary prohibition or restriction
31. Recovery of costs of new connections

PART 6  
OPERATIONS

32. Felling or lopping of trees and removal of hedgerows

PART 7  
MISCELLANEOUS AND GENERAL

33. Application of landlord and tenant law
34. Cases in which land is to be treated as not being operational land
35. Defence to proceedings in respect of statutory nuisance
36. Protective provisions
37. Certification of plans etc.
38. Service of notices
39. Procedure in relation to certain approvals etc.
40. Arbitration

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- SCHEDULE 1 — AUTHORISED DEVELOPMENT  
SCHEDULE 2 — REQUIREMENTS  
SCHEDULE 3 — STREETS SUBJECT TO PERMANENT AND TEMPORARY  
ALTERATION OF LAYOUT  
    PART 1 — PERMANENT ALTERATION OF LAYOUT  
    PART 2 — TEMPORARY ALTERATION OF LAYOUT  
SCHEDULE 4 — STREETS SUBJECT TO STREET WORKS  
SCHEDULE 5 — TEMPORARY PROHIBITION OR RESTRICTION OF THE  
USE OF STREETS  
SCHEDULE 6 — ACCESS

- PART 1 — THOSE PARTS OF THE ACCESSES TO BE MAINTAINED AT THE PUBLIC EXPENSE
- PART 2 — THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY
- PART 3 — THOSE WORKS TO RESTORE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY
- SCHEDULE 7 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
- SCHEDULE 8 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 9 — PROTECTIVE PROVISIONS
  - PART 1 — FOR THE PROTECTION OF NATIONAL GRID
  - PART 2 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
  - PART 3 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
  - PART 4 — FOR THE PROTECTION OF EASTERN POWER NETWORKS
- SCHEDULE 10 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS
- SCHEDULE 11 — REMOVAL OF IMPORTANT HEDGEROWS

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 114, 115 and 120 of the Planning Act 2008(b) (“the 2008 Act”).

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals.

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order—

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(a) S.I. 2009/2264 as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522). There are other amendments to the Regulations which are not relevant to this Order.

(b) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27), see S.I. 2013/1124 for transitional provisions.

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

# PART 1

## PRELIMINARY

### Citation and commencement

1. This Order may be cited as the Progress Power (Gas Fired Power Station) Order 2015 and comes into force on 14th August 2015.

### 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;

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

“authorised development” means the development and associated development described in 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 submitted as revision 1.0 dated 19th December 2014 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;

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- (a) 1961 c.33. There are 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. Section 11(1) 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. 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 and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006. 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 paragraph 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 1992 (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 65(5) 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; and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994. 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 in relation to England: 6th April 2012: S.I. 2012/601). 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 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

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

“commence”, unless otherwise provided for, means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis;

“the design principles statement” means the Design Principles contained within Annex 1, Design Principles 10.2 Design and Access Statement pages 39 to 43, in the document dated October 2014 and in chapter 0.4 of the Design and Access Statement Revision 0 dated December 2014 submitted with the application and certified as such by the Secretary of State for the purposes of this Order;

“the ecological management strategy” means the outline ecological management strategy, submitted as revision 1.0 dated September 2014 and which is certified as such by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“the environmental statement” means the environmental statement submitted with the application together with any supplementary or further environmental information submitted by the undertaker in support of the application and certified as such by the Secretary of State for the purposes of this Order updated as follows—

- (a) Appendix 4.A is superseded by the outline construction environment management plan;
- (b) Appendix 12.D is superseded by the outline construction traffic management plan;
- (c) Appendix 13.C is superseded by the stage 2 written scheme of archaeological investigation;

“exhaust gas emission flue stack” means the exhaust gas emission flue stack excluding any ancillary support structures, sound proof cladding, and emissions monitoring platforms;

“the flood risk assessment” means the flood risk assessment submitted with the application as revision 0 dated December 2014 and certified as such by the Secretary of State for the purposes of this Order;

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

“gas turbine generator” means either one or two gas turbines which drive a single electricity generator for the purposes of generating electricity;

“gross rated electrical output” means the aggregate of gross electrical power as measured at the terminals of each generator in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010(a);

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

“important hedgerow plan” means the important hedgerow plan submitted as revision 1.0 dated December 2014 and certified as such by the Secretary of State for the purposes of this Order;

“the land plans” means the plans submitted as revision 0 dated December 2014 and certified as the land plans by the Secretary of State for the purposes of this Order;

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(a) S.I. 2010/675, as amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), the Environmental Permitting (England and Wales) (Amendment No. 2) Regulations 2011 (S.I. 2011/2933), the Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (S.I. 2012/630), the Controlled Waste (England and Wales) Regulations 2012 (S.I. 2012/811).

“landscape mitigation strategy” means the interim landscape mitigation strategy submitted as revision 3.0 dated December 2014 and which is certified as such by the Secretary of State for the purposes of this Order;

“limits of deviation” means, in respect of numbered works 1, 2, 3, 5 and 7 the outer limits of the corresponding numbered area shown on the works plans and, in respect of numbered works 4 and 6, the limits to either side of the corresponding numbered line shown on the works plans;

“MWe” means megawatts of electrical output;

“maintain” includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole, of the authorised development and “maintenance” and “maintaining” are to be construed accordingly;

“National Grid” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WC2N 5EH and/or National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London, WC2N 5EH as the context requires;

“Natural England” means the body established by section 1 of the Natural Environment and Rural Communities Act 2006(a);

“operational phase” means the period of time that the relevant part of the authorised development is in operation after construction and “operation” should be construed accordingly;

“Order land” means the land required for, or affected by, the proposed development shown on the land plans and described in the book of reference;

“the Order limits” means the limits shown on figure 1 (sheet 1 and 2) of the works plans within which the authorised development may be carried out;

“the outline construction environment management plan” means the outline construction environment management plan submitted as revision 0 dated December 2014 and which is certified as such by the Secretary of State for the purposes of this Order;

“the outline construction traffic management plan” means the outline construction traffic management plan submitted as revision 0 dated December 2014 and which is certified as such by the Secretary of State for the purposes of this Order;

“the outline landscaping plans” means the outline landscaping plans, submitted as revision 0 and dated December 2014 and certified as such by the Secretary of State for the purposes of this Order;

“the outline lighting strategy ” means the outline lighting strategy submitted as revision 0 dated December 2014 and which is certified as such by the Secretary of State for the purposes of this Order;

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

“Progress Power Limited” means Progress Power Limited (Company No. 8190283) whose registered office is at 33 Cavendish Square, London, W1G 0PW;

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

“Requirements” means those matters set out in Schedule 2 (Requirements) to this Order;

“rights of way, streets and access plan” means the plan submitted as revision 0 dated December 2014 and certified as such by the Secretary of State for the purposes of this Order;

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(a) 2006 c.16. Section 1 was amended by section 311(2) and (3) of the Marine and Coastal Access Act 2009 (c.23).

(b) 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.

“stage 2 written scheme of archaeological investigation” means the stage 2 written scheme of archaeological investigation submitted as revision 0 dated December 2014 and certified as such by the Secretary of State for the purposes of this Order;

“statutory undertaker” means any person within the meaning of section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

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

“travel plan” means the travel plan contained in appendix 12.E of the environmental statement setting out measures to promote sustainable transport during the construction phase and outline measures to propose sustainable transport during the operational phase of the authorised development;

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

“undertaker” means Progress Power Limited;

“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; and

“the works plans” means the works plans submitted as revision 0 and dated December 2014 and certified as such by the Secretary of State for the purposes of this Order.

(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 numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans and a reference to numbered work 1 means 1A to 1D (inclusive) and a reference to numbered 3 means 3A and 3B (inclusive).

(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 rights of way, streets and access plan.

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

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

3.—(1) Subject to the provisions of this Order and to the Requirements in Schedule 2, the undertaker is granted development consent for the authorised development in Schedule 1 to be carried out within the Order limits.

(2) Subject to paragraph (3), each numbered work must 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 areas shown on the works plans up to the limits of deviation.

## **Maintenance of authorised development**

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

## **Operation of authorised development**

5.—(1) The undertaker is hereby authorised to operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of an electricity generating station.

## **Benefit of the Order**

6.—(1) The provisions of this Order shall—

- (a) in respect of Works No. 3 and No. 5 have effect for the benefit of the undertaker and National Grid; and
- (b) in respect of Work No. 7 have effect for the benefit of the undertaker and the highway authority.

(2) The undertaker may, with the consent of the Secretary of State—

- (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

except where paragraph (5) applies in which case no such consent is required.

(3) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or the lessee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) 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.

(5) This paragraph applies where—

- (a) the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989<sup>(a)</sup> or section 7 of the Gas Act 1986<sup>(b)</sup>; or
- (b) the time limits for all 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 claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of all such claims;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

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(a) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), and section 6(10) amended by section 89(3) of the Energy Act 2004 (c.20). There are other amendments to the section that are not relevant to this Order.

(b) 1986 c.44. Section 7 was amended by section 5 of the Gas Act 1995 (c.45) and section 76(2) of the Utilities Act 2000 (c.27). There are other amendments to the section that are not relevant to this Order.



(6) Where paragraph (5) applies the undertaker must notify the Secretary of State in writing before transferring or granting any benefit referred to in paragraph (2).

### **Guarantees in respect of payment of compensation**

7.—(1) The undertaker must not begin to exercise the powers in articles 10 to 29, 31 and 32 of this Order in relation to any land unless it has first put in place either—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose which has been approved by the Secretary of State.

(2) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under the Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

### **Application and modification of legislative provisions**

8. Regulation 6 of the Hedgerows Regulations 1997<sup>(a)</sup> is to be modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

- “(k) or for carrying out development which has been authorised by development consent made pursuant to the Planning Act 2008”.

## **PART 3**

### **STREETS**

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

9.—(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 3 (permanent 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 3 (temporary alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without prejudice to 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 within the Order limits and, without limiting 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 places.

(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) must 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 (or such longer period as may be agreed with the undertaker in writing), it is deemed to have granted consent.

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(a) S.I. 1997/1160. There are amendments to the Regulations which are not relevant to this Order.

(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.

### **Street works**

**10.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (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 undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

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

### **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 6 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 6 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 9(3) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 6 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.

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

**12.**—(1) The undertaker may, for the purposes of carrying out the authorised development, temporarily alter, divert, prohibit the use of 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) Subject to 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.

(3) The undertaker must provide reasonable access for cyclists and pedestrians (including wheelchair users) going to or from premises abutting a street affected by the temporary alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access.

(4) Subject to paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets specified in columns (1) and (2) of Schedule 5 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—

- (a) any street specified in paragraph (4) 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.

(6) If a street authority fails to notify the undertaker of its decision before the end of the period of eight weeks of receiving an application for consent under paragraph (5)(b) (or such longer period as may be agreed with the undertaker in writing), that street authority is deemed to have granted consent.

### **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 location specified in Part 1 of Schedule 3 (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 3 (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 the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Agreements with street authorities**

**14.—**(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) include an agreement between the undertaker and street authority specifying 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**

**15.—**(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 approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Except as authorised under this Order, the undertaker must not, in carrying out or maintaining works, 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 substance 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), 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 Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in that Act.

### **Authority to survey and investigate the land**

**16.—**(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.

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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), and amended by section 32 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed, see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2010/675. Regulation 12 was amended by S.I. 2011/2043 and 2013/390. There are other amendments to these Regulations which are not relevant to this Order.

(c) 1964 c.40.

(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 are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

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, under Part 1 (determination of questions of disputed compensation) of the 1961 Act(a).

### **Removal of human remains**

17.—(1) In this article “the specified land” means the Order land.

(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 project; 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 planning 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

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(a) The functions of the Lands Tribunal under the 1961 Act are transferred to the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007 (c.15).

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

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; 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 must 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) must be sent by the undertaker to the address 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) is not to apply to a removal carried out in accordance with this article.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

**18.—**(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

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<sup>(a)</sup> 1857 c.81. There are amendments to this Act which are not relevant to this Order.

(2) This article is subject to article 21 (compulsory acquisition of rights etc.), article 24 (acquisition of subsoil only) and article 27 (temporary use of land for carrying out the authorised development).

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

**19.**—(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), notwithstanding that 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.

(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 must be applied to the construction of paragraph (2) (with any necessary modifications).

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

**20.**—(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(a) as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) must cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents 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 etc.**

**21.**—(1) The undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

(2) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of Schedule 7 (modification of compensation and compulsory purchase enactments for creating new rights),

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(a) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are amendments to the 1981 Act which are not relevant to this Order.

where the undertaker acquires a right over land under paragraph (1), the undertaker is not to be required to acquire a greater interest in that land.

(3) Schedule 7 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.

(4) 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.

(5) 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**

**22.**—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are 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 (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 in either case 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 are 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 rights over land of which the undertaker takes temporary possession under this Order are 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 Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(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 undertaker) or article 29 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) 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 effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

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

**23.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 applies 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)—

(a) for subsection (1) there is substituted—

“(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.”;

(b) in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”;

(c) for subsections (5) and (6) there is substituted—

“(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.”.

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

(a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and

(b) subsection (2) is omitted.

(5) 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)” are omitted.

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

### **Acquisition of subsoil only**

**24.**—(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 18 (compulsory acquisition of land) and paragraph (1) of article 21 (compulsory acquisition of rights etc.) 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) must not prevent article 25 (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**

**25.**—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to 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 is to be, unless the undertaker agrees to take the land subject to the counter-notice, 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.

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

**26.**—(1) The undertaker may enter upon 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) is not to 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 in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is to be 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**

**27.**—(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 columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;
  - (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 requisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration);
- (b) remove any buildings and vegetation from that land; and
- (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 (3) of Schedule 8, or any other mitigation works identified in the environmental statement or the Requirements.
- (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 one year beginning with the date of final commissioning of the authorised development; 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 to be 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).
- (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).
- (11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8.

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

- 28.—**(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, 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).

(11) In this article "the maintenance period" means the period of 5 years beginning with the date of final commissioning.

### **Statutory undertakers**

**29.** Subject to the provisions of Schedule 9 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans 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
- (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**

**30.** 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 Schedule 9 (protective provisions), as if this Order had not been made.

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

**31.—(1)** Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be 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 29 (statutory undertakers) any person who is—

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

is to be 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) In this article—

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

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

## PART 6 OPERATIONS

### **Felling or lopping of trees and removal of hedgerows**

**32.**—(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 the authorised development.

(2) In carrying out any activity authorised by paragraph (1) and paragraph (4), 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.

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

(4) The undertaker may, for the purposes of the authorised development—

- (a) subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 11 (removal of important hedgerows).

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997.

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(a) 2003 c.21.

**PART 7**  
**MISCELLANEOUS AND GENERAL**

**Application of landlord and tenant law**

**33.**—(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 same; 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 prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies 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.

**Cases in which land is to be treated as not being operational land**

**34.** Development consent granted by this Order insofar as it relates to numbered works 1, 2, 3A and 5 described in Schedule 1 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 not being operational land).

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

**35.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by persons aggrieved by statutory nuisances) 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 is to 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 sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or

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(a) 1990 c.43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c.25). 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(4) of Schedule 15 to, the Environmental Protection Act 1990, c.43. There are other amendments to the 1974 Act which are not relevant to this Order.

- (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 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), is not to 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.

### **Protective provisions**

36. Schedule 9 (protective provisions) has effect.

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

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

- (a) the book of reference;
- (b) the design principles statement;
- (c) the ecological management strategy;
- (d) the environmental statement;
- (e) the flood risk assessment;
- (f) the important hedgerow plan;
- (g) the land plans;
- (h) the landscape mitigation strategy;
- (i) the outline construction environment management plan;
- (j) the outline construction traffic management plan;
- (k) the outline landscaping plans;
- (l) the outline lighting strategy;
- (m) the rights of way, streets and access plan;
- (n) the stage 2 written scheme of archaeological investigation; and
- (o) the works plans

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

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

### **Service of notices**

38.—(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) 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 as the case may be “occupier” of the land (describing it); and
- (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.

### **Procedure in relation to certain approvals etc.**

**39.**—(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 (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Save for applications made pursuant to Schedule 10, if, within eight weeks after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed with the undertaker in writing) it has not

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(a) 1978 c.30.

notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(3) Schedule 10 is to have effect in relation to all consents, agreements or approvals required from the relevant planning authority in respect of discharge of requirements listed in Schedule 2.

(4) Where an application is made to or request is made of the relevant planning authority for any consent, agreement or approval required or contemplated by article 13(c) (access to works) or requirement 6 (Highway accesses) of Schedule 2 to the Order, such application or request must at the same time be sent to the highway authority for its reference.

(5) Where an application is made to or request is made of the relevant planning authority for any consent, agreement or approval required or contemplated by any requirement where a third party is a consultee under that requirement, such application or request must at the same time be sent to that third party for its reference.

### **Arbitration**

**40.** 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.

Signed by authority of the Secretary of State for Energy and Climate Change

23rd July 2015

*Giles Scott*  
Head of National Infrastructure Consents and Coal Liabilities  
Department of Energy and Climate Change

## SCHEDULE 1 Article 3

### AUTHORISED DEVELOPMENT

In the County of Suffolk and the District of Mid Suffolk—

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act comprising—

**Work No. 1** – a simple cycle gas fired peaking power generating station on the site of the former Eye airfields in Eye, Mid Suffolk with a gross electrical output of up to 299MWe comprising—

(1) **Work No. 1A**—

- (a) up to 5 gas turbine generators; and
- (b) up to 5 exhaust gas emission flue stacks,

(2) **Work No. 1B**—

- (a) an administration building;
- (b) a store;
- (c) a control room/office/workshop;
- (d) telemetry apparatus;
- (e) a black start diesel generator;

- (f) a raw/fire water tank and demineralised water storage tank;
- (g) a natural gas receiving station and gas treatment compound containing—
  - (i) a pipeline inspection gauge (PIG) receiving facility;
  - (ii) isolation valves, metering, heating, filtering, compression, pressure regulation equipment;
  - (iii) electricity supply kiosk; and
  - (iv) control and instrumentation kiosks,

(3) **Work No. 1C** – a switchyard / banking compound containing up to seven transformers, switchgear building and other plant required to manage the transmission of electricity,

(4) **Work No. 1D**—

- (a) security infrastructure, including cameras, perimeter fencing and a gatehouse;
- (b) site lighting infrastructure, including perimeter lighting columns;
- (c) internal roadways, car parking, pedestrian network, cycle parking, hardstanding and water treatment trailers;
- (d) site drainage, attenuation pond and waste management infrastructure;
- (e) electricity, water, wastewater and telecommunications and other services;
- (f) landscaping including tree planting, fencing and other boundary treatments and ecological mitigation;
- (g) high voltage and low voltage cabling, equipment and controls and associated telemetry and electrical protection auxiliary cabling;
- (h) underground gas pipeline connection, associated telemetry and cathodic protection test / transformer rectifier unit;
- (i) other ancillary equipment; and
- (j) new means of accesses from Potash Lane including permanent road surface, drainage, gates and fencing,

**Work No. 2**—

- (a) a maintenance compound including new hardstanding,
- (b) landscaping including tree planting, fencing and other boundary treatments; and
- (c) site drainage,

Associated development within the meaning of section 115(2) of the 2008 Act in connection with the nationally significant infrastructure project referred to in Work No. 1 comprising—

**Work No. 3A**—

- (a) an above ground installation (also referred to as a minimum offtake connection compound) containing—
  - (i) a minimum offtake connection comprising remotely operable valves, control and instrumentation kiosks and electrical supply kiosks;
  - (ii) a pipeline inspection gauge (PIG) facility, comprising a PIG launching facility, emergency control valves, isolation valves, control and instrumentation kiosks, and electricity supply kiosks;
- (b) security infrastructure, including cameras, lighting (including perimeter lighting columns) and perimeter fencing;
- (c) site drainage and waste management infrastructure;
- (d) electricity and telecommunications connections and other services;
- (e) below ground sacrificial anode pit; and
- (f) landscaping including tree planting, fencing and other boundary treatments and ecological mitigation,

**Work No. 3B** – new means of access between Potash Lane and numbered work 3A, including signing and road markings works, permanent road surface, gates, fencing, drainage, infilling, landscaping and tree and hedge removal and other incidental works,

**Work No. 4**—

- (a) a new underground gas pipeline connection and telemetry cabling, approximately 1.7 km in length connecting the natural gas receiving station and gas treatment compound in Work No. 1B to Work No. 3A;
- (b) pipeline field marker posts and cathodic protection test/ transformer rectifier unit;
- (c) below ground drainage works;
- (d) tree and hedge removal; and

landscaping including tree planting, fencing and other boundary treatments and ecological mitigation.

**Work No. 5**—

- (a) 400 kV substation and site office and welfare accommodation;
- (b) 400 kV cable sealing end compound;
- (c) underground high voltage electrical cables and associated telemetry and electrical protection auxiliary cabling;
- (d) security infrastructure including perimeter fencing with gates, security cameras and site lighting;
- (e) landscaping including bunds, tree planting, fencing and other boundary treatments and ecological mitigation;
- (f) site drainage and waste management infrastructure; and
- (g) internal roadways, car parking, pedestrian network and hardstanding for planned maintenance.

**Work No. 6**—

- (a) an underground 400 kV electrical cable circuit and associated telemetry and electrical protection auxiliary cabling, approximately 1.6 km in length; and
- (b) joint bays in relation to Work No. 6a.

**Work No. 7** – new means of access between Work No. 5 and the A140 including road widening, new turning lane, signing and road markings works, permanent road surface, gates, fencing, drainage, infilling, landscaping and tree and hedge removal and other incidental works,

In connection with Works No. 1 to 7, and to the extent that they do not otherwise form part of any such works, further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works in this Schedule whether or not shown on the plans referred to in the Requirements falling within the scope of the works assessed in the environmental statement.

## SCHEDULE 2 REQUIREMENTS

Article 3

### **Time limits**

1. The authorised development shall commence no later than the expiration of 5 years from the date this Order comes into force.

## Numbered Works

2. Where these Requirements refer to numbered work 1 or numbered work 3, such reference is to be taken to mean numbered works 1A to 1D (inclusive) and numbered works 3A and 3B respectively.

## Detailed Design

3.—(1) The authorised development must be carried out in accordance with the approved plans in Table 1, inclusive of any limits of deviation, bearing the references listed below and any other plans, drawings, documents, details, schemes, statements or strategies which are approved by the relevant planning authority pursuant to any Requirement (as the same may be amended by approval of the relevant planning authority pursuant to Requirement 22(1)).

(2) In this paragraph “AOD” means above ordnance datum;

**Table 1**

Works Plans
Rights of Way, Streets and Access Plan

(3) The authorised development must be carried out in accordance with the parameters specified in Table 2 below (as the same may be amended by approval of the relevant planning authority pursuant to Requirement 22(1)).

**Table 2**

<i>Building or structure</i>	<i>Maximum height (metres above existing site level of approximately 48.5 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 48.5 metres AOD)</i>	<i>Maximum length (metres)</i>	<i>Minimum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum width (metres)</i>
Each gas turbine generator (where one or two gas turbine generators are constructed) (part of numbered work 1A)	19.0	–	30.0	–	30.0	–
Each gas turbine generator (where three, four or five gas turbine generators are constructed) (part of numbered work 1A)	10.0	–	36.0	–	23.0	–
Each exhaust	30.0	25.0	–	–	8.4	–

<i>Building or structure</i>	<i>Maximum height (metres above existing site level of approximately 48.5 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 48.5 metres AOD)</i>	<i>Maximum length (metres)</i>	<i>Minimum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum width (metres)</i>
gas emission flue stack (where one or two gas turbine generators are constructed) (part of numbered work 1A)						
Each exhaust gas emission flue stack (where three, four or five gas turbine generators are constructed) (part of numbered work 1A)	30.0	25.0	–	–	6.0	–
Control room/office/workshop (part of numbered work 1B)	6.0	–	29.0	–	23.0	–
Black start diesel generator (part of numbered work 1B)	5.0	–	13.0	–	5.0	–
Raw/fire water tank (part of numbered work 1B)	11.0	–	11.0	–	11.0	–
Demineralised water tank (part of numbered work 1B)	2.0	–	2.0	–	2.0	–
Gas receiving station (part of numbered work 1B)	3.0	–	50.0	–	46.0	–
Switchyard / banking	11.3	–	60	–	60	–

<i>Building or structure</i>	<i>Maximum height (metres above existing site level of approximately 48.5 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 48.5 metres AOD)</i>	<i>Maximum length (metres)</i>	<i>Minimum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum width (metres)</i>
compound (numbered work 1C)						
Switchgear Building (part of numbered work 1C)	11.3	–	21.0	–	15.0	–
Gatehouse (part of numbered work 1D)	4.5	–	9.0	–	8.0	–
Above ground installation (numbered work 3A)	3.0	–	72.0	–	52.0	–
Pipeline inspection gauge facility (part of numbered work 3A)	2.0	–	36.0	–	27.0	–
Minimum offtake connection (part of numbered work 3A)	2.0	–	36.0	–	25.0	–
Sealing end compound (part of numbered work 5)	12	–	22.0	–	45.0	–
Substation: (gas insulated substation) – (maximum compound size) (part of numbered work 5)	12	–	80.0	–	100.0	–
(gas insulated substation) – (indoor switchgear hall) (part of numbered work 5)	12	–	21.0	–	62.0	–

(4) To the extent that design principles for any numbered work are set out in the design principles statement, that numbered work must be designed in accordance with the relevant design principle set out therein.

(5) Except to the extent approved pursuant to Requirement 6, numbered works 1, 2, 3 and 5 shall not commence until, for that numbered work, details of the layout, scale and external appearance of the numbered work have been submitted to and approved by the relevant planning authority.

(6) In respect of numbered work 6a, the undertaker must utilise horizontal directional drilling as the installation method where the numbered work crosses the A140.

(7) No part of numbered work 6a must commence until a method statement detailing measures to protect the integrity of the A140 from horizontal directional drilling or activities associated therewith has been submitted to and approved by the highway authority. The method statement must be implemented as approved.

### **Provision of landscaping**

4. No part of the authorised development shall commence until a written landscaping plan for each numbered work has been submitted to and approved by the relevant planning authority. The landscaping plan must include details of all proposed hard and soft landscaping works and be substantially in accordance with the landscaping mitigation proposals set out in the outline landscaping plans and the landscape mitigation strategy, and include details of—

- (a) location, number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting, and details of protection measures including guards, stakes and deer fencing;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) bunds and proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) measures for the management of the ecological resources that will remain within the Order land on completion of the authorised development;
- (h) implementation timetables for all landscaping works; and
- (i) a scheme of landscape maintenance for the life of the authorised development (to include an aftercare protocol providing for joint annual inspections by the relevant planning authority and the undertaker for a period of ten years from the implementation dates as agreed pursuant to Requirement 5(2)).

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

5.—(1) All landscaping works must be carried out in accordance with the landscaping plan approved under Requirement 4 in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(2) The landscaping works must be implemented in accordance with implementation timetables approved in the landscaping plan under regulation 4.

(3) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years (save in relation to numbered works 1 and 5 which is to be seven 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 approved by the relevant planning authority.



## **Highway accesses**

6.—(1) No authorised development comprised in numbered works 1, 3 and 7 shall commence until for that numbered work, written details of the siting, design and layout (to the extent either not provided as part of or differing from, the details contained in Schedule 1, the works plans or the rights of way, streets and access plan) of any new permanent or temporary means of access to a highway to be used by vehicular traffic (including those identified in Schedule 3), or any alteration to an existing means of access to a highway used by vehicular traffic has been submitted to and approved by the relevant planning authority (in consultation with the highway authority).

(2) The highway accesses must be constructed in accordance with the approved details and in accordance with the drawing at Appendix A and Appendix B to the outline construction traffic management plan.

(3) Prior to the date of final commissioning, a reinstatement plan for those elements of numbered work 7 which enable connectivity between Old Norwich Road and the A140 must be submitted to and approved by the relevant planning authority, in consultation with the highway authority. The reinstatement plan must include—

- (a) measures to reinstate the A140 carriageway to its pre-construction condition; and
- (b) a landscaping plan showing how the land outside the A140 carriageway will be reinstated.

(4) The reinstatement plan must be implemented as approved.

## **Fencing and other means of enclosure**

7.—(1) No authorised development comprised in numbered works 1, 3 and 5 shall be commenced until written details of all proposed permanent and temporary fences, walls or other means of enclosure for that numbered work have been submitted to and approved by the relevant planning authority.

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

(3) Any temporary fencing must be removed within three months of the completion of the authorised development.

(4) The details approved pursuant to this requirement must be implemented.

## **Surface and foul water drainage**

8.—(1) No authorised development comprised in numbered works 1, 2, 3, 5 and 7 shall be commenced until, for each numbered work, written details of the surface and foul water drainage strategy (including means of pollution control and measures designed to control surface water during construction) for construction and operational phases of the project have been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency, such strategy to be in accordance with the principles set out in Section 5 of the flood risk assessment.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details before the operational phase of that part of the authorised development commences.

## **Archaeology**

9.—(1) No part of the authorised development shall be commenced until for each numbered work a written scheme of archaeological investigation covering that numbered work has been submitted to and approved in writing by the relevant planning authority, in consultation with Suffolk County Council. The written scheme of archaeological investigation must be in accordance with the stage 2 written scheme of archaeological investigation.

(2) Following completion of the investigations set out in the approved written scheme of archaeological investigation and prior to the commencement of each of numbered works 1 to 7, a written scheme regarding archaeological mitigation measures for that numbered work must be submitted to and approved in writing by the relevant planning authority, in consultation with Suffolk County Council and must include the following—

- (a) an archaeological and historical background;
- (b) the rationale, programme and methodology of site investigation and recording;
- (c) the programme for post-investigation interpretation;
- (d) provision to be made for publication and dissemination of the results of the site investigation, including for public benefit and understanding, should the nature of the archaeology warrant it;
- (e) provision to be made for the deposition of the finds assemblage and the site archive;
- (f) provision to be made for a programme of excavation fieldwork and post-excavation assessment should significant archaeological remains be encountered, and where warranted post-excavation analysis; and
- (g) nomination of a competent person or persons/organisation with appropriate local / regional expertise to undertake the works set out within the written scheme of investigation.

(3) Any archaeological works must be carried out in accordance with the schemes approved pursuant to sub-paragraphs (1) and (2).

(4) Any site investigation and post-investigation interpretation must be completed for the relevant numbered works in accordance with the programme set out in the schemes approved pursuant to sub-paragraphs (1) and (2).

### **Ecological management plan**

**10.**—(1) No part of the authorised development is to commence until, for that numbered work, a written ecological management plan substantially reflecting the ecological mitigation and enhancement measures and surveys set out in the ecological management strategy has been submitted to and approved by the relevant planning authority, in consultation with Natural England.

(2) The ecological management plan must include an implementation timetable and must be carried out as approved.

### **Construction Environment Management Plan**

**11.**—(1) No part of the authorised development shall be commenced until a construction environment management plan covering that numbered work has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency. The final construction environment management plan must be in accordance with the outline construction environment management plan and must include the following—

- (a) complaints procedures;
- (b) provision for setting up a Community Liaison Group;
- (c) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise and vibration);
- (d) waste management;
- (e) an assessment of the site specific risks to and mitigation measures designed to protect controlled waters (surface and groundwaters) including pollution incident control;
- (f) landscape and visual impact mitigation (specifically the protection of trees and hedgerows to be retained in accordance with BS 5837: 2012 (or its updates) and a scheme to minimise visual intrusion of the construction works);
- (g) security measures;

- (h) protocol in relation to unexploded ordnance;
- (i) save in respect of numbered work 1, a protocol in the event that unexpected contaminated land is identified during ground investigation or construction;
- (j) restoration of site following completion of construction;
- (k) the requirement for completion of a soil resources survey, details of methods for soil handling, storage and replacement during construction and details of the aftercare programme; and
- (l) a scheme of artificial lighting.

(2) All construction works must be undertaken in accordance with the approved construction environment management plan.

### **Land contamination**

**12.**—(1) No part of authorised development comprised in numbered work 1 may commence until a written scheme (which may be included in the construction environment management plan) to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or significant pollution of controlled waters or ground waters or the environment has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and a remediation strategy identifying the remedial measures to be taken, if required, to render the land fit for its intended purpose, together with a management plan (as necessary) which sets out long-term measures with respect to any contaminants remaining on the site and a verification plan outlining how achieving the remedial objectives will be demonstrated.

(3) Remediation, if required, must be carried out in accordance with the scheme approved under sub-paragraph (1).

(4) A verification report demonstrating completion of any remediation works and the effectiveness of the remediation must be submitted to and approved, in writing, by the local planning authority in consultation with the Environment Agency.

### **Construction traffic**

**13.**—(1) No part of the authorised development may commence until a construction traffic management plan has been submitted to and approved by the relevant planning authority in consultation with the highway authority. The construction traffic management plan must be in accordance with the outline construction traffic management plan and must include the following—

- (a) construction vehicle routing plans;
- (b) details of a vehicle tracking system;
- (c) evidence of appropriate trial runs that demonstrate the suitability of the route from point of entry onto the trunk road network to the site for the proposed types of abnormal indivisible loads;
- (d) site access plans;
- (e) proposals for the management of junctions to and crossings of highways and other public rights of way;
- (f) proposals for the scheduling and timing of movements of delivery vehicles including details of abnormal indivisible loads;
- (g) details of escorts for abnormal indivisible loads;
- (h) proposals for temporary warning signs and banksman and escort details;
- (i) proposals for assessing the existing condition of affected highways;

- (j) details of any temporary or permanent improvements to highways;
- (k) proposals for the making good of any incidental damage to highways by construction traffic associated with the authorised development including street furniture, structures, drainage features, highway verge and carriageway surfaces; and
- (l) proposals for traffic management controls (such as temporary signals), diversion routes and signage required during any of the activities, operations or works associated with the creation or upgrading of any permanent or temporary means of access pursuant to this Order.

(2) The construction traffic management plan must be implemented as approved.

(3) During the operation or decommissioning of the generating station comprised in numbered work 1 no abnormal indivisible loads may be transported into or out of the site without the prior written approval of the relevant planning authority in consultation the highway authority.

**Construction Travel Plan**

**14.**—(1) No part of the authorised development may commence until a construction worker travel plan has been submitted to and approved by the relevant planning authority in consultation with the highway authority. The construction worker travel plan must be in accordance with the travel plan (other than the measures which relate to the operational phase).

(2) The construction worker travel plan must be carried out as approved.

**Travel plan during operational phase**

**15.**—(1) Prior to the date of final commissioning a written operational travel plan must be submitted to and approved by the relevant planning authority. The operational travel plan must be in accordance with the outline measures to propose sustainable transport during the operational phase set out in the travel plan (other than the measures which relate to the construction phase).

(2) The operational travel plan must be carried out as approved.

**Construction hours**

**16.**—(1) Subject to sub-paragraph (2) no construction work, or the delivery or removal of materials, may take place on any Sunday or public holiday and no construction work, or the delivery or removal of materials, may take place outside the hours of—

- (a) 0700 and 1900 hours on weekdays; and
- (b) 0700 and 1300 hours on Saturdays.

(2) Sub-paragraph (1) does not prevent construction works, or the delivery or removal of materials, being carried out on public holidays or outside the hours set out in sub-paragraph (1) with the prior written approval of the relevant planning authority.

(3) Nothing in sub-paragraph (1) precludes a start-up period from 0630 to 0700 and a shut down period from 1900 to 1930 on weekdays (excluding public holidays) and start-up period from 0630 to 0700 and a shut down period from 1300 to 1330 on a Saturday.

**Control of noise during operational phase**

**17.**—(1) Following the date of final commissioning of numbered work 1, site-attributable noise attributable to numbered work 1 during the operational phase must be limited to the noise levels set out below measured at the coordinates set out below—

<i>Noise Limit Sound Pressure Level, LAeq, 5mins dB</i>	<i>Coordinates</i>	
	<i>X</i>	<i>Y</i>
57	613272.4	275205.6
55	613214.4	275014.8

<i>Noise Limit Sound Pressure Level, LAeq, 5mins dB</i>	<i>Coordinates</i>	
	<i>X</i>	<i>Y</i>
52	613131.2	275156.8

(2) Noise measurements at each of the identified locations must be undertaken in accordance with the equipment specifications, measurement procedures and monitoring equipment positioning guidelines outlined in sections 4, 5 and 6 (save for 6.3.5 and 6.3.6 which are not applicable) of BS 4142:1997. Measurements should be undertaken with the power plant running at base load. A single LAeq 5min measurement will be required at each identified location during the day, evening and night time periods identified as follows: daytime (0700hrs to 1900hrs), evening (1900hrs to 2300hrs) and night time (2300hrs to 0700hrs).

(3) Within three months of the date of final commissioning of numbered work 1, the undertaker must submit measurements to the relevant planning authority taken in the vicinity of the relevant locations specified at sub-paragraph (1) of this requirement, including details of any remedial works and a programme of implementation should the emissions exceed the levels specified at sub-paragraph (1) of this requirement.

### **Control of artificial light emissions during operational phase**

**18.**—(1) Each of numbered works 1, 3 and 5 must not commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of artificial light emissions for that numbered work which is in accordance with the outline lighting strategy has been submitted to and approved by the relevant planning authority.

(2) The approved scheme for the management and mitigation of artificial light emissions must be implemented before and maintained during the operation of the relevant numbered work.

### **European protected species**

**19.**—(1) No part of the authorised development shall commence until further supplemental survey work identified in the ecological management strategy and ecological management plan for European protected species has been carried out covering that numbered work to establish whether European protected species are present.

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

(3) “European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010(a).

### **Operation of the authorised development**

**20.**—(1) In any calendar year the operation of the gas turbine generators comprised in numbered work 1A shall not exceed 1500 hours in total.

(2) Within three months of the end of a calendar year, the undertaker must submit a written report to the relevant planning authority detailing the actual total number of hours of operation of the gas turbine generators comprised in numbered work 1A.

(3) For the purposes of this requirement, “operation of the gas turbine generators” means the duration in which any energy is exported at the settlement metering point, being the point at which a supply to the transmission system from the authorised development is measured.

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(a) S.I. 2010/490. There are amendments to these Regulations which are not relevant to this Order.

### **Decommissioning strategy**

**21.**—(1) Subject to obtaining the necessary consents, unless otherwise agreed with the relevant planning authority, within twenty four months of the site ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis), a scheme for the demolition and removal of numbered works 1, 2, 3, 5 and any other un-numbered works carried out as necessary or expedient for the purposes of those numbered works must be submitted to the relevant planning authority.

(2) The demolition and removal of works must be implemented in accordance with the approved scheme.

(3) On the one year anniversary of the site ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis) the undertaker must notify the relevant planning authority of the same.

### **Amendments to approved details**

**22.**—(1) With respect to the approved plans specified in Requirement 3(1), the parameters specified in Requirement 3(3) and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any other Requirement (the “Approved Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Plans, Parameters, Details or Schemes are to be taken to include the amendments approved pursuant to this sub-paragraph.

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in Requirement 3(3) above must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

### **Date of final commissioning and cessation**

**23.**—(1) The undertaker must notify the relevant planning authority of the date of final commissioning as soon as reasonably practicable and in any event within three months after the occurrence of that date.

(2) The undertaker must notify the relevant planning authority of the date the authorised development permanently ceases to generate power on a commercial basis as soon as reasonably practicable and in any event within three months after the occurrence of that date.

## SCHEDULE 3

Articles 9 and 13

### STREETS SUBJECT TO PERMANENT AND TEMPORARY ALTERATION OF LAYOUT

#### PART 1

##### PERMANENT ALTERATION OF LAYOUT

<i>(1)</i> Area	<i>(2)</i> Street subject to alteration of layout	<i>(3)</i> Description of alteration
In the District of Mid Suffolk	Potash Lane	The lowering of the levels of the kerb between the points marked A and B on the rights of way, streets and access plan to provide permanent access to numbered work 3A.
In the District of Mid Suffolk	Old Norwich Road	Creation of new access comprising part of numbered work 7 including the lowering of the levels of the kerb between the points marked M and N on the rights of way, streets and access plan to provide permanent access to numbered work 5.
In the District of Mid Suffolk	Access Road Serving Yaxley Lake	Upgrading of the existing access comprising part of numbered work 7 between the points marked O1 and P on the rights of way, streets and access plan to provide permanent access to numbered work 5.
In the District of Mid Suffolk	Leys Lane	Works to facilitate the creation of a new access comprising part of numbered work 7 between the points marked Q and R on the rights of way, streets and access plan to provide permanent access to numbered work 5.

#### PART 2

##### TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> Area	<i>(2)</i> Street subject to alteration of layout	<i>(3)</i> Description of alteration
In the District of Mid Suffolk	Potash Lane	The lowering of the levels of the kerb between the points marked B and C on the rights of way, streets and access plan to provide temporary access to numbered work 3 during construction.
In the District of Mid Suffolk	A140	Creation of new access comprising part of numbered work 7 including the lowering of the levels of the kerb between the points marked K and L on the rights of way, streets and access plan to provide temporary access to numbered work 5 during construction.

## SCHEDULE 4

Article 10

### STREETS SUBJECT TO STREET WORKS

<i>(1) Area</i>	<i>(2) Street subject to street works</i>	<i>(3) Description of the street works</i>
In the District of Mid Suffolk	Potash Lane	Works for numbered work 3B including installation of drainage between the points marked A and B on the rights of way, streets and access plan.
In the District of Mid Suffolk	Part of disused runway complex	Works for numbered work 4 to be installed within that part of the disused runway complex between the points marked D and E on the rights of way, streets and access plan.
In the District of Mid Suffolk	Part of disused runway complex	Works for numbered works 4 and/or 6 to be installed within that part of the disused runway complex between the points marked H and I on the rights of way, streets and access plan.
In the District of Mid Suffolk	A140	Works for the provision of a new temporary access during construction comprising part of numbered work 7 between the points marked K and L on the rights of way, streets and access plan.
In the District of Mid Suffolk	Old Norwich Road	Works for the provision of a new permanent access comprising part of numbered work 7 between the points marked M and N on the rights of way, streets and access plan.
In the District of Mid Suffolk	Access Road Serving Yaxley Lake	Works for the provision of a new permanent access comprising part of numbered work 7 between the points marked O1 and P on the rights of way, streets and access plan.
In the District of Mid Suffolk	Leys Lane	Works for numbered work 6 to be installed in the street between the points marked Q and R on the rights of way, streets and access plan.
In the District of Mid Suffolk	Potash Lane	Works for numbered works 4 and 6 to be installed in the street between the points marked T and U on the rights of way, streets and access plan.
In the District of Mid Suffolk	Footpaths numbered W-583/009/0 and W 239/015/0	Works for numbered works 4 and 6 to be installed in the street between the points marked V and W on the rights of way, streets and access plan.



SCHEDULE 5

Article 12

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
In the District of Mid Suffolk	Potash Lane	<p><b>Prohibition/Restriction:</b> From the points marked A to B on the rights of way, streets and access plan, being approximately 30 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover numbered work 3B providing access to 3A.</p>
In the District of Mid Suffolk	Potash Lane	<p><b>Prohibition/Restriction:</b> From the points marked B to C on the rights of way, streets and access plan, being approximately 56 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to provide a temporary access to numbered work 3.</p>
In the District of Mid Suffolk	Part of disused runway complex	<p><b>Prohibition/Restriction:</b> From the points marked D to F on the rights of way, streets and access plan being approximately 51 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover numbered work 4 crossing and being installed.</p>
In the District of Mid Suffolk	Potash Lane	<p><b>Prohibition/Restriction:</b> From the points marked G to J1 on the rights of way, streets and access plan being approximately 96 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover numbered works 4 and 6 crossing and being installed.</p>
In the District of Mid Suffolk	Part of disused runway complex	<p><b>Prohibition/Restriction:</b> From the points marked J1 to J2 on the rights of way, streets and access plan being approximately metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover numbered works 4 and 6 crossing and being installed.</p>
In the District of Mid Suffolk	A140	<p><b>Prohibition/Restriction:</b> From the points marked K to L on the rights of way, streets and access plan being approximately 598 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover part of numbered work 7 providing access to numbered work 5.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
In the District of Mid Suffolk	A140	<p><b>Prohibition/Restriction:</b> From the points marked K to L on the rights of way, streets and access plan being approximately 598 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover the reinstatement of part of numbered work 7 providing access to numbered work 5.</p>
In the District of Mid Suffolk	Old Norwich Road	<p><b>Prohibition/Restriction:</b> From the points marked M to N on the rights of way, streets and access plan being approximately 143 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover part of numbered work 7 providing access to numbered work 5.</p>
In the District of Mid Suffolk	Access Road Serving Yaxley Lake	<p><b>Prohibition/Restriction:</b> From the points marked O1 to P on the rights of way, streets and access plan being approximately 190 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover part of numbered work 7 providing access to numbered work 5.</p>
In the District of Mid Suffolk	Leys Lane	<p><b>Prohibition/Restriction:</b> From the points marked Q to R on the rights of way, streets and access plan being approximately 20 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover numbered work 6 being installed in the street.</p>
In the District of Mid Suffolk	Potash Lane	<p><b>Prohibition/Restriction:</b> From the points marked S to T on the rights of way, streets and access plan being approximately 23 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street for temporary works associated with numbered works 4 and 6 being installed in the street.</p>
In the District of Mid Suffolk	Potash Lane	<p><b>Prohibition/Restriction:</b> From the points marked T to U on the rights of way, streets and access plan being approximately 227 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of part of the street to cover numbered works 4 and 6 being installed in the street.</p>

<i>(1) Area</i>	<i>(2) Street subject to temporary prohibition or restriction of use</i>	<i>(3) Extent of temporary prohibition or restriction of use of streets</i>
In the District of Mid Suffolk	Footpaths numbered W-583/009/0 and W 239/015/0	<b>Prohibition/Restriction:</b> From the points marked V to W on the rights of way, streets and access plan being approximately 77 metres. <b>Purpose of the Prohibition/Restriction:</b> Partially restrict the footpath to cover numbered works 4 and 6 being installed in the street and to facilitate the creation of numbered work 2.
In the District of Mid Suffolk	Castleton Way	<b>Prohibition/Restriction:</b> At a distance of no greater than 30 metres along Castleton Way and no more than 15 metres along Potash Lane at the Castleton Way/Potash Lane junction. <b>Purpose of the Prohibition/Restriction:</b> To manage articulated vehicles, with the use of 4 banksmen, during construction from accessing and exiting Potash Lane.

## SCHEDULE 6

Article 11

### ACCESS

#### PART 1

#### THOSE PARTS OF THE ACCESSES TO BE MAINTAINED AT THE PUBLIC EXPENSE

<i>(1) Location</i>	<i>(2) Street</i>	<i>(3) Description of relevant part of access</i>
In the District of Mid Suffolk	A140	The new access constituting part of numbered work 7 and shown on the rights of way, streets and access plan hatched blue between points K and L.
In the District of Mid Suffolk	A140	The reinstated access pursuant to requirement 6(3) and shown on the rights of way, streets and access plan hatched blue between points K and L.
In the District of Mid Suffolk	Old Norwich Road	The new access constituting part of numbered work 7 and shown on the rights of way, streets and access plan hatched blue between points M and N.

## PART 2

### THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of access</i>
In the District of Mid Suffolk	Potash Lane	The new access constituting numbered work 3B and shown on the rights of way, streets and access plan hatched red between points A and B.
In the District of Mid Suffolk	A140	The new access constituting part of numbered work 7 and shown on the rights of way, streets and access plan hatched red between points K and L.
In the District of Mid Suffolk	Old Norwich Road	The new access constituting part of numbered work 7 and shown on the rights of way, streets and access plan hatched red between points M and N.
In the District of Mid Suffolk	Access Road Serving Yaxley Lake	The new access constituting part of numbered work 7 and shown on the rights of way, streets and access plan hatched red between points O1 and P.
In the District of Mid Suffolk	Means of access	The new access constituting part of numbered work 7 and shown on the rights of way, streets and access plan hatched red between points P and O2.

## PART 3

### THOSE WORKS TO RESTORE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Mid Suffolk	Potash Lane	Those areas between the points marked B and C on the rights of way, streets and access plan hatched red.

## SCHEDULE 7

Article 21

### 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 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(a) has effect subject to the modifications set out in sub-paragraph (2) and (3).

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(a) 1973 c.26.

(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” there are substituted 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” there are substituted 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 paragraphs (a) and (b) there are substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there are substituted the words “right or restrictive covenant over or affecting the whole of the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

#### *Application of the 1965 Act*

**3.—**(1) The 1965 Act has 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 applies 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) there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or 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) there is substituted 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 Progress Power (Gas Fired Power Station) Order 2015 (“the Order”) ceases, in relation to that person, 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 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 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 must 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 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 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 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 are modified correspondingly.

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

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Part of public footpath numbered W-583/009/0 situated to the east of Oaksmere Business Park, Eye	1a_GR	Temporary use to facilitate construction for the numbered work 4	Part of numbered work 4
Land forming part of the disused runway complex at Eye Airfield situated to the east of Oaksmere Business Park, Eye	2a_GR	Temporary use to facilitate construction for the numbered work 4	Part of numbered work 4
Land forming part of the disused runway complex at Eye Airfield situated to the south east of Oaksmere Business Park, Eye	2b_GR	Temporary use (including the passing and re-passing of vehicles) to facilitate construction for the numbered work 4	Part of numbered work 4
Land forming part of the private access road known as Potash Lane situated to the south east of Oaksmere Business Park, Eye	3a_GR	Temporary use to facilitate construction for the numbered work 4	Part of numbered work 4
Part of agricultural land, part of wooded area and part of an access track forming part of White House Farm situated to the south of Oaksmere Business Park, east of the A140 and north of Castleton Way, Eye	4a_GR	Temporary use to facilitate construction for the numbered work 4	Part of numbered work 4
Land forming part of the private access road known as Potash Lane leading from Castleton Way to the disused runway complex at Eye Airfield, Eye	6a_GR	Temporary use to facilitate construction for the numbered works 3B and 4	Part of numbered work 4
Part of agricultural land forming part of White House Farm situated north of Castleton Way and to the east of the access road leading from Castleton Way to the disused runway complex at Eye Airfield, Eye	7a_GR	Temporary use to facilitate construction for the numbered works 3A and 4	Part of numbered works 3A and 4

<i>(1) Location</i>	<i>(2) Number of land shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised development</i>
Part of public footpath numbered W-583/009/0 situated to the east of Oaksmere Business Park and to the south west of the National Grid Gas compound, Eye	1a_ER	Temporary use to facilitate construction for the numbered work 6	Part of numbered work 6
Land forming part of the disused runway complex at Eye Airfield situated to the east of Oaksmere Business Park and to the south west of the National Grid Gas compound, Eye	2a_ER	Temporary use to facilitate construction for the numbered work 6	Part of numbered work 6
Land forming part of the disused runway complex at Eye Airfield situated to the south east of Oaksmere Business Park and to the south west of the National Grid Gas compound, Eye	2b_ER	Temporary use (including the passing and re-passing of vehicles) to facilitate construction for the numbered work 6	Part of numbered work 6
Land forming part of the private access road known as Potash Lane situated to the south east of Oaksmere Business Park, Eye	3a_ER	Temporary use to facilitate construction for the numbered work 6	Part of numbered work 6
Part of agricultural land and access track situated to the south of Oaksmere Business Park and White House Farm buildings, Eye	4a_ER	Temporary use to facilitate construction for the numbered work 6	Part of numbered work 6
Part of agricultural land, part of access track and hard standing to White House Farm buildings situated to the south and west of Oaksmere Business Park and White House Farm buildings, Eye	4b_ER	Temporary use to facilitate construction for the numbered work 6	Part of numbered work 6
Part of agricultural land situated to the east of the A140 and south west of White House Farm buildings, Eye	4c_ER	Temporary use to facilitate construction for the numbered work 6	Part of numbered work 6
Part of agricultural land forming part of Red House Farm situated to the west of Old Norwich Road and south and south west of Yaxley Lake, Eye	9a_ER	Temporary use to facilitate construction for the numbered work 6	Part of numbered work 6



<i>(1) Location</i>	<i>(2) Number of land shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised development</i>
Part of agricultural land forming part of Red House Farm situated to the west of Old Norwich Road and south and south west of Yaxley Lake, Eye	9b_ER	Temporary use to facilitate construction for the numbered work 6	Part of numbered work 6
Part of agricultural land forming part of Vine Farm situated to the north of Vine Farm and west of Leys Lane, Eye	13a_ER	Temporary use to facilitate construction for numbered works 5, 6 and 7	Part of numbered works 5, 6 and 7
Part of agricultural land forming part of Red House Farm situated to the south of the access road from Old Norwich Road to Yaxley Lake, Eye	3_JW	Temporary use to facilitate construction for the numbered work 7	Part of numbered work 7

## SCHEDULE 9

Article 36

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF NATIONAL GRID

##### Application

1. For the protection of National Grid as referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

##### Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid;
- (b) mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

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(a) 1989 c.29.

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the use and maintenance of the authorised development;

“commence” has the same meaning as under section 56 of the 1990 Act and means the earliest date on which any material operation comprised in the authorised development begins to be carried out and commencement shall be construed to have the same meaning;

“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, across, along or upon such land;

“National Grid” means either—

(a) National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH; or

(b) National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH,

as the context shall require;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed.

**3.** Except for paragraphs 4 (apparatus in streets subject to temporary prohibition or restriction), 8, 9 (retained apparatus: protection), 10 (expenses) and 11 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

#### **Apparatus of National Grid in streets subject to temporary prohibition or restriction**

**4.** Notwithstanding the temporary prohibition or restriction under the powers of article 12 (temporary prohibition or restriction of use of streets), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

#### **Acquisition of land**

**5.—(1)** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Schedule shall prevail.

#### **Removal of apparatus**

**6.—(1)** If, in the exercise of the agreement reached in accordance with sub-paragraph (5) or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over 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 to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 7 sub-paragraph (1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

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

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to National Grid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 40 (arbitration) of the Order shall apply.

### **Retained apparatus: protection of National Grid as Gas Undertaker**

8.—(1) Not less than 56 days before the commencement of any authorised development authorised by this Order that involves activities or works specified in National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" that are within the proximities described therein to any apparatus the removal of which has not been required by the undertaker under paragraph 6 sub paragraph (2) or otherwise, the undertaker must submit to National Grid a plan.

(2) In relation to works which will be situated on, over, under or within 15 metres measured in any direction of any apparatus to which sub-paragraph (1) applies, or (wherever situated) impose any load directly upon any such apparatus or involve embankment works within 15 metres of any such apparatus, the plan to be submitted to National Grid under sub-paragraph (1) shall show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22").

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld.

(5) In relation to a work to which sub-paragraphs (1) and (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraph (1) or (2) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (2), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (4), (5), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) 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 3 and 6 to 7 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 6 sub-paragraph (2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 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 shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

### **Retained apparatus: protection of National Grid as Electricity Undertaker**

**9.**—(1) Not less than 56 days before the commencement of any authorised development under this Order that is near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6 sub-paragraph (2) or otherwise and to which sub-paragraph (2)(i) or (2)(ii) applies, the undertaker must submit to National Grid a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted under sub-paragraph (1) shall show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) shall be detailed including a method statement and describing in addition to the matters set out in sub-paragraph (2)—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraph (1), (2) or (3) applies until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (1), (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in this sub-paragraph or sub-paragraph (8);
- (b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraph (1), (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraph (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (2), (3) or (5), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(8) Where National Grid require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the undertakers' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1), (2), (3) or (5) (except in an emergency).

(9) If National Grid in accordance with sub-paragraph (6) or (8) 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 3 and 6 to 7 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 6 sub-paragraph (2).

(10) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 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 shall apply to and in respect of the new plan.

(11) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order comply with National Grid's policies for development near overhead lines ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**10.—**(1) Subject to the following provisions of this paragraph, the undertaker shall pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by that undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 6 sub-paragraph (3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was 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 undertaker or in default of agreement settled by arbitration in accordance with article 40 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall 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 shall 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 National Grid in respect of works by virtue of sub-paragraph (1) shall, 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 National Grid 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.

## **Indemnity**

**11.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any material damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision shall not (subject to sub-paragraph (3)) excuse the undertaker from liability under the provisions of this sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 6 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-paragraph (3)(b), shall be subject to the full terms of this Schedule including this paragraph 11 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering their representations.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, National Grid shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph for claims reasonably incurred by National Grid.

### **Enactments and agreements**

12. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

13. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Schedule (including, for the avoidance of doubt, pursuant to paragraph 6 sub-paragraph (2) and paragraph 8 or 12) in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party’s operations.

### **Access**

14. If in consequence of the agreement reached in accordance with paragraph 5 sub-paragraph (1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

15. Save for differences or disputes arising under paragraph 6(2), 6(4), 7(1), 8 and 9 any difference or dispute arising between the undertaker and National Grid under this Schedule shall,



unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 40 (arbitration) of the Order.

## PART 2

### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

**16.** For the protection of the utility undertakers referred to in this Part of this Schedule (save for National Grid which is protected by Part 1 of this Schedule and Eastern Power Networks which is protected by Part 4 of this Schedule), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

**17.** In this Part of 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(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(b);
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“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);
- (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,

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(a) 1989 c.29.

(b) 1991 c.56. Section 51A to the 1991 Act was inserted by section 92(1) of the Water Act 2003 (c.37).

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

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.

**18.** This Part of 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.

**19.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary prohibition or restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**20.** 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.

**21.—(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 or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(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, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(5) 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 40 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), 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 in any land controlled by the undertaker, 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.

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

**22.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

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

**23.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 21(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

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

(4) If a utility undertaker in accordance with sub-paragraph (3) 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 16 to 22 apply as if the removal of the apparatus had been required by the undertaker under paragraph 21(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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The 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, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**24.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 21(2).

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 40 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 21(2); 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.

(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), 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, is to be reduced by the amount which represents that benefit.

**25.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 21(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

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

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

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

**PART 3**  
**FOR THE PROTECTION OF OPERATORS OF ELECTRONIC**  
**COMMUNICATIONS CODE NETWORKS**

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

(2) In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

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

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(c);

“electronic communications code network” means—

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

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

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

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

**28.** The exercise of the powers of article 29 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(d) (undertaker’s works).

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

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

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

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

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

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(a) 2003 c.21.

(b) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003.

(c) See section 106.

(d) 1984 c.12. Paragraph 23 was amended by section 190 of, and paragraph 68 of Schedule 25 and part 1 of Schedule 27 to, the Water Act 1989 (c.15), section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and section 106(2) of, and paragraphs 1, 5(d) and 8 of Schedule 3 to, the Communications Act 2003.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 40 (arbitration).

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

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

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

## PART 4

### FOR THE PROTECTION OF EASTERN POWER NETWORKS

**32.** For the protection of Eastern Power Networks as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Eastern Power Networks.

**33.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Eastern Power Networks to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by Eastern Power Networks;

“Eastern Power Networks” means Eastern Power Networks plc (Company No. 2366906) whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;

“functions” includes powers and duties; and

“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.

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

**35.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary prohibition or restriction of use of streets), Eastern Power Networks is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**36.** 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.

**37.**—(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 or over which access to any apparatus is enjoyed or requires that Eastern Power Networks’ apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Eastern Power Networks to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been

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(a) 1989 c.29.

provided, to the reasonable satisfaction of Eastern Power Networks in accordance with sub-paragraphs (2) to (7).

(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, the undertaker must give to Eastern Power Networks written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Eastern Power Networks reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Eastern Power Networks the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Eastern Power Networks must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed provided that this obligation shall not require Eastern Power Networks to exercise any power it may have to acquire any land or rights by compulsory purchase order.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Eastern Power Networks and the undertaker or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(5) Eastern Power Networks must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 40 (arbitration), and after the grant to Eastern Power Networks of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

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

**38.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Eastern Power Networks facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Eastern Power Networks or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

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

**39.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 37(2), the undertaker must submit to Eastern Power Networks a plan, section and description of the works to be executed.

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

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

(4) If Eastern Power Networks in accordance with sub-paragraph (3) 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 32 to 38 apply as if the removal of the apparatus had been required by the undertaker under paragraph 37(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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

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

**40.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Eastern Power Networks the reasonable expenses incurred by Eastern Power Networks in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 37(2).

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

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 40 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Eastern Power Networks 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 37(2); 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.

(5) An amount which apart from this sub-paragraph would be payable to Eastern Power Networks in respect of works by virtue of sub-paragraph (1), 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 Eastern Power Networks any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**41.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 37(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Eastern Power Networks, or there is any interruption in any service provided, or in the supply of any goods, by Eastern Power Networks, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Eastern Power Networks in making good such damage or restoring the supply; and
- (b) indemnify Eastern Power Networks for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Eastern Power Networks,

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

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

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

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

## SCHEDULE 10

Article 39

### 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 (including agreement or approval in respect of part of a Requirement) included in this Order the relevant planning authority must give notice to the undertaker of their decision on the application within a period of eight (8) 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 by the undertaker and the relevant planning authority in writing.

(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**

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

(2) In the event that it considers such further information to be necessary it must, within twenty one (21) business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the relevant planning authority does not give such notification within this twenty one (21) day period it is deemed to have sufficient information to consider the application and thereafter is not entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 1(1)(b), paragraph 1(3) and this paragraph.

### **Appeals**

3.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses (including a deemed refusal pursuant to paragraph 1(3)) an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) 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
- (c) 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 any requirement consultee;
- (b) the Secretary of State must appoint a person within twenty (20) 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;

- (c) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within twenty (20) 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 twenty (20) business days of receipt of written representations pursuant to 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 thirty (30) business days of the deadline for the receipt of counter-submissions pursuant to paragraph (d).

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

(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 any 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 (10) business days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c) to (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 deemed to be an approval for the purpose of Schedule 1 to this Order 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 (10) 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 Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

## SCHEDULE 11

Article 32

### REMOVAL OF IMPORTANT HEDGEROWS

(1) <i>Area</i>	(2) <i>Number of hedgerow shown on important hedgerow plan</i>
Mid Suffolk District Council	Hedgerow 1, as shown between A and B on Sheet 1
Mid Suffolk District Council	Hedgerow 2, as shown between C and D on Sheet 1
Mid Suffolk District Council	Hedgerow 3, as shown between E and F on Sheet 1
Mid Suffolk District Council	Hedgerow 4, as shown between G and H on Sheet 1
Mid Suffolk District Council	Hedgerow 5, as shown between I and J on Sheet 1
Mid Suffolk District Council	Hedgerow 6, as shown between K and L on Sheet 1
Mid Suffolk District Council	Hedgerow 7, as shown between M and N on Sheet 1
Mid Suffolk District Council	Hedgerow 8, as shown between O and P on Sheet 1
Mid Suffolk District Council	Hedgerow 9, as shown between Q and R on Sheet 1
Mid Suffolk District Council	Hedgerow 10, as shown between S and T on Sheet 1
Mid Suffolk District Council	Hedgerow 11, as shown between U and V on Sheet 1

#### EXPLANATORY NOTE

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

This Order authorises Progress Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas 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. The Order also makes provision in connection with the maintenance of the new section of highway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 37 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at the offices of Mid Suffolk County Council, 131 High Street, Needham Market, Suffolk, IP6 8DL.

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