

**2019 No.**

**INFRASTRUCTURE PLANNING**

**The Millbrook Gas Fired Generating Station Order 2019**

*Made* - - - - *13th March 2019*

*Coming into force* - - *3rd April 2019*

**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 this Order
7. Consent to transfer benefit of the Order

**PART 3**

**STREETS**

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

**PART 4**

**SUPPLEMENTAL POWERS**

16. Discharge of water

17. Authority to survey and investigate the land

**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. Modification of Part 1 of the Compulsory Purchase Act 1965
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
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. Amendment and modification of statutory provisions
38. Certification of plans etc.
39. Service of notices
40. Procedure in relation to certain approvals
41. Arbitration
42. Funding
43. Low Level Restoration Scheme

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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 — 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 6 — TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS
- SCHEDULE 7 — STREETS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED
- SCHEDULE 8 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIONS
- SCHEDULE 9 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 10 — PROTECTIVE PROVISIONS
  - PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
  - PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
  - PART 3 — FOR THE PROTECTION OF NATIONAL GRID
  - PART 4 — FOR THE PROTECTION OF EPN
  - PART 5 — FOR THE PROTECTION OF ANGLIAN WATER
  - PART 6 — FOR THE PROTECTION OF COVANTA ROOKERY SOUTH LIMITED
  - PART 7 — FOR THE PROTECTION OF NETWORK RAIL
- SCHEDULE 11 — MODIFICATIONS TO AND AMENDMENTS OF THE ROOKERY SOUTH (RESOURCE RECOVERY FACILITY) ORDER 2011
- SCHEDULE 12 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS
- SCHEDULE 13 — ARBITRATION RULES
- SCHEDULE 14 — DOCUMENTS AND PLANS TO BE CERTIFIED

An application under section 37 (applications for orders granting development consent) of the Planning Act 2008(a) (the “2008 Act”) has been made to the Secretary of State for an order granting development consent.

The application has been examined by a single appointed person appointed by the Secretary of State pursuant to Chapter 3 (the single appointed person procedure) of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(b). The single appointed person has submitted a report and recommendation to the Secretary of State under section 83 (single appointed person to examine and report on application) of the 2008 Act(c).

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(d) and has had regard to the documents and matters referred to in section 104(2) (decisions in cases where national policy statement has effect) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

In accordance with section 127 (statutory undertakers’ land) of the 2008 Act (e), the Secretary of State has applied the relevant tests and is satisfied that they have been met.

Accordingly, the Secretary of State, in exercise of the powers in sections 114 (grant or refusal of development consent order), 115 (development for which development consent may be granted), and 120 (what may be included in order granting development consent) of the 2008 Act, makes the following Order—

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- (a) 2008 c.29: The relevant provisions of the 2008 Act are amended by Chapter 6 of Part 6 of, and schedule 13 to, the Localism Act 2011 (c. 20) and by sections 22-27 of the Growth and Infrastructure Act 2013 (c. 27). Transitional provisions are contained in S.I. 2013/1124.
  - (b) S.I. 2010/103, amended by S.I. 2012/635.
  - (c) 2008 c.29. Section 83 was amended by paragraphs 35(2) and 35(3) of schedule 13(1) and paragraph 1 of Part 20 of section 25(20) to the Localism Act 2011 (c.20).
  - (d) S.I. 2009/2263. Regulation 3 was amended by S.I. 2012/635 and S.I. 2012/787. S.I. 2009/2263 was revoked by S.I. 2017/572, but continues to apply to this application for development consent by virtue of transitional provisions contained in Regulation 37(2) of that instrument.
  - (e) 2008( c.29), Section 127 was amended by sections 23, (2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013 (c.27) and by paragraphs 64(1) and (2) of Schedule 13(1) and paragraph 1 of Schedule 25 to the Localism Act 2011 (c.20).

# PART 1

## PRELIMINARY

### Citation and commencement

1. This Order may be cited as the Millbrook Gas Fired Generating Station Order 2019 and comes into force on 3 April 2019.

### 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 1984 Act” means the Road Traffic Regulation Act 1984(d);

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

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

“the 2008 Act” means the Planning Act 2008(g);

“the access road visibility splay” means the visibility splay shown hatched in purple on the access road visibility splay plan;

“access road visibility splay plan” means the plan identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified by the Secretary of State as the access road visibility splay plan for the purposes of this Order;

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

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act;

“book of reference” means the document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“commence” means beginning to carry out any material operation, as defined in section 155 (when development begins) of the 2008 Act, comprised in or carried out for the purposes of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

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- (a) 1961 c.33.
  - (b) 1965 c.56.
  - (c) 1980 c.66.
  - (d) 1984 c.27.
  - (e) 1990 c.8.
  - (f) 1991 c.22.
  - (g) 2008 c.29.

“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis but excluding the generation of power during commissioning and testing;

“design principles statement” means the document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and 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 document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as such by the Secretary of State for the purposes of this Order;

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

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

“gas turbine generator” means one gas turbine which drives a single electricity generator for the purposes of generating electricity including air inlet filter house, air inlet duct, exhaust diffuser, and auxiliaries such as lube oil system, air dryers, fuel gas filter package, instrument air system and compressor washing;

“gross rated electrical output” means the aggregate of gross electrical power as measured at the terminals of the generator in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2016;

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

“land plans” means the plans identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which are certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means, in respect of numbered works 1A, 1B, 1C, 1D, 2A, 2B, 3A, 3B, 4A, 4B, 5, 6, 7, and 8 the outer limits of the corresponding numbered area shown on the works plans;

“low level restoration scheme agricultural track” means an access track into Rookery South Pit from Green Lane which is in part existing and in part to be constructed in accordance with the planning permission for the low level restoration scheme of Rookery South Pit (reference number BC/CM/2000/8);

“low level restoration scheme baseline works” means the works permitted by the planning permission for the low level restoration scheme of Rookery South Pit (reference number BC/CM/2000/8) and shown on the low level restoration scheme baseline works plan;

“low level restoration scheme baseline works plan” means the plan identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the low level restoration scheme baseline works plan by the Secretary of State for the purposes of this Order;

“low level restoration scheme drainage strategy” means the drainage strategy to be approved pursuant to conditions 8 and 9 of the planning permission for the low level restoration scheme of Rookery South Pit (reference number BC/CM/2000/8);

“low level restoration scheme secondary access track” means an access track into Rookery South Pit from Station Lane which is to be constructed in accordance with the planning permission for the low level restoration scheme of Rookery South Pit (reference number BC/CM/2000/8);

“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;

“Millbrook Power Limited” means Millbrook Power Limited (Company No. 08920458) whose registered office is at Drax Power Station, Drax, Selby, North Yorkshire YO58 8PH;

“National Grid Electricity” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH;

“National Grid Gas” means National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

“Network Rail” means Network Rail Infrastructure Limited (Company Registration Number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown on the land plans and described in the book of reference;

“Order limits” means the limits shown on the works plans;

“outline construction environment management plan” means the document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the outline construction environment management plan by the Secretary of State for the purposes of this Order;

“outline construction traffic management measures” means the document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the outline construction traffic management measures by the Secretary of State for the purposes of this Order;

“outline landscape and ecological mitigation and management strategy” means the document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the outline landscape and ecological mitigation and management strategy by the Secretary of State for the purposes of this Order;

“outline lighting strategy” means the document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the outline lighting strategy by the Secretary of State for the purposes of this Order;

“outline travel plan” means document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the outline travel plan by the Secretary of State for the purposes of this Order;

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

“relevant planning authority” means Central Bedfordshire Council in relation to land in its area and Bedford Borough Council in relation to land in its area, and “the relevant planning authorities” means both of them;

“requirements” means those matters set out in Schedule 2 to this Order;

“rights of way, streets and access plan” means the plan identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the rights of way, streets and access plan by the Secretary of State for the purposes of this Order;

“Rookery South access road” means the access road comprising numbered work 5A pursuant to The Rookery South (Resource Recovery Facility) Order 2011(b);

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) 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;

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(a) 1981. c.67.  
(b) S.I. 2013/680.

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

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

“undertaker” means

- (a) in respect of the authorised development, Millbrook Power Limited;
- (b) in respect of numbered works 5, 6 and 7, Millbrook Power Limited and National Grid Electricity; and
- (c) in respect of numbered work 3A, Millbrook Power Limited and National Grid Gas;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“works plans” means the plans identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the works plans 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 and references in this Order to the imposition of restrictions are references to restrictive covenants over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plan and rights of way, streets and access plan 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), a reference to numbered work 2 means 2A and 2B (inclusive), a reference to numbered work 3 means 3A and 3B (inclusive), and a reference to numbered work 4 means 4A and 4B (inclusive). 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.

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

(7) References to any statutory body include that body’s successor bodies as from time to time have jurisdiction over the authorised development.

## PART 2

### PRINCIPAL POWERS

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

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

(2) Subject to paragraph (3), each numbered work must be situated within the numbered area shown on the works plans.

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

#### **Maintenance of authorised development**



4.—(1) 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.

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

### **Operation of authorised development**

5.—(1) The undertaker is authorised to use and 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 the generating station.

### **Benefit of this Order**

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

(2) Paragraph (1) does not apply to—

- (a) numbered works 5, 6 and 7 for which development consent is granted by this Order for the benefit of Millbrook Power Limited and National Grid Electricity; and
- (b) numbered works 3A for which development consent is granted by this Order for the benefit of Millbrook Power Limited and National Grid Gas.

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

7.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) 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 (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker include references to the transferee or the lessee.

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

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

- (a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply, etc) of the Electricity Act 1989<sup>(a)</sup> or section 7 (licensing of public gas transporters) 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;

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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 this 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.

- (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.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state —

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

## PART 3 STREETS

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

**8.**—(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 (permanent alteration of layout) of Schedule 3 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 (temporary alteration of layout) of Schedule 3 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 paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing place(s).

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

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

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

### **Street works**

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 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) drill, tunnel or bore under the street;
- (c) place and keep 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).

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

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

(2) Those parts of each means of access specified in Part 2 of Schedule 5 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 8(3) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 5 which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

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

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

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

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the

action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

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

**11.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may 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) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) 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) Without prejudice to the generality of 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 6 (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) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Stopping up of Streets**

**12.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 7 (streets to be stopped up for which a substitute is to be provided) to the extent specified, by reference to the letters and numbers shown on the rights of way, streets and access plan, in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 7 shall be wholly or partly stopped up under this article unless-

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

(3) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up shall be extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

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

(5) This article is subject to article 30 (apparatus and rights of statutory undertakers in streets).

### **Access to works**

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

- (a) form and layout the permanent means of access, or improve existing means of access, in the locations specified in Part 1 of Schedule 3 (streets subject to permanent and temporary alteration of layout);
- (b) form and layout the temporary means of access in the locations specified in Part 2 of Schedule 3; and
- (c) with the approval of the relevant planning authorities 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 10(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.

### **Traffic Regulation**

**15.—**(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction of the authorised development or any other development necessary for the authorised development that takes place within the Order limits, at any time prior to when the authorised development first becomes operational—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
- (b) make provision as to the direction or priority of vehicular traffic on any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 11 (temporary prohibition or restriction of use of streets) or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(a).

(4) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**16.—**(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

(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) 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.

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(a) 2004 c.18. There are amendments to this Act not relevant to this Order.

(b) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b),(5)(c) and 36(2) of the Water Act 2003 (c.37).

(6) This article does not authorise any water discharge activities or groundwater activities for which an environmental permit would be required pursuant to regulation 12(1) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016<sup>(a)</sup>.

(7) 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 (interpretation) of the Harbours Act 1964<sup>(b)</sup>, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(c)</sup> have the same meaning as in that Act.

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

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

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

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

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

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

(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.

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

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(a) S.I. 2016/1154.

(b) 1964 c.40. Paragraph 9B was inserted into Schedule 2 paragraph 9 of Schedule 3 of by the Transport and Works Act 1992 (c.42). There are other amendments to the 1964 Act that are not relevant to this Order.

(c) 1991 c.57.

## 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.

(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) (nuisance: statutory authority) of the 2008 Act, 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,

caused by the carrying out or use of the authorised development and the operation of section 158 (benefit of order granting development consent) 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 (further provision as to compensation for injurious affection) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(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 is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(a) (execution of declaration) 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.**

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(a) 1981 c. 66.



**21.—**(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In respect of such parts of the Order land that are shown edged red and shaded blue on the land plans, the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights and impose the restrictions described in the book of reference and shown on the land plans.

(3) Subject to section 8(a) (provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 to this Order (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictions), where the undertaker creates or acquires a right over land or imposes a restriction under paragraph (1) or (2), the undertaker is not to be required to acquire a greater interest in that land.

(4) Schedule 8 is to have 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 or the imposition of a restriction.

(5) In any case where the acquisition of new rights or the imposition of a restriction under paragraph (1) or (2) 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 create and acquire such rights or impose such restrictions to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) Subject to the modifications set out in Schedule 8 the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

### **Private rights**

**22.—**(1) Subject to the provisions of this article, all private rights and restrictions 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)(b) (powers of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictions 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—

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- (a) Section 8 was amended by section 199 of and Schedule 17 to the Housing and Planning Act 2016 (c.22). Section 8 is modified by section 9 of and Schedule 3 (as amended by section 108 of the Utilities Act 2000 (c.27) to the Gas Act 1986 (c.44), section 151 of and Schedule 18 to the Water Act 1989 (c.15), section 10 of and Schedule 3 to the Electricity Act 1989 (c.29), Schedules 9 and 11 to the Water Industry Act 1991 (c.56) and Schedules 18 and 19 to the Water Resources Act 1991 (c.57). There were other amendments, and are other modifications, to that section that are not relevant to this Order.
  - (b) Section 11(1) was amended by section 34 of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and sections 186 and 187 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22). There are other amendments to the section that are not relevant to this Order.

- (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) (powers of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, and where so notified by the undertaker, all private rights and restrictions 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 or restrictions 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 or restriction 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 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act 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 creation and acquisition of rights or the imposition of restrictions 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 are not to 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 or restriction in question is vested, belongs or benefits.

(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 applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of act) for subsection 2 there is substituted—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.

(5) Section 5A (time limit for general vesting declaration) is omitted.

(6) In section 5B (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year

period mentioned in section 5A” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Millbrook Gas Fired Generating Station Order 2019”.

(7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

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

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 24(3) (acquisition of subsoil only) of the Millbrook Gas Fired Generating Station Order 2019, which excludes the acquisition of subsoil only from this Schedule”.

(10) 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 (and as modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965) 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 paragraphs (1) and 21(2) of article 21 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed 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) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **Modification of Part 1 of the Compulsory Purchase Act 1965**

**25.—**(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Millbrook Gas Fired Generating Station Order 2019”.

(3) In section 11A (powers of entry: further notice of entry)—

- (a) in section (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 20 (time limit for exercise of authority to acquire land compulsorily) of the Millbrook Gas Fired Generating Station Order 2019”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 24(3) (acquisition of subsoil only) of the Millbrook Gas Fired Generating Station Order 2019, which excludes the acquisition of subsoil only from this Schedule”; and

(b) after paragraph 29, insert—

“PART 4

#### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 27 (temporary use of land for carrying out the authorised development) or article 28 (temporary use of land for maintaining the authorised development) of the Millbrook Gas Fired Generating Station Order 2019.”

#### **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) does not apply in relation to—

(a) any subway or underground building; or

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land 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 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act 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 possession of—

(i) so much of the land specified in columns (1) and (2) of Schedule 9 (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 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;

- (b) remove any buildings, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (3) of Schedule 9, or any other mitigation works.

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

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

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of 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 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) 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 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) 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 or any debris 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 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 (determination of questions of disputed compensation) of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act 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) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in part 1 of the book of reference under article 21 (compulsory acquisition of rights etc.); or
- (b) acquiring any right in the subsoil of any part of the Order land identified in part 1 of the book of reference under article 24 (acquisition of subsoil only) or article 26 (rights under or over streets)

(10) 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.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act 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 (application of compulsory acquisition provisions) of the 2008 Act.

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 9 (land of which temporary possession may be taken).

(13) The provisions of the Neighbourhood Planning Act 2017<sup>(a)</sup> do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development.

### **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 land 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 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act 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 (refusal to give possession to acquiring authority) of the 1965 Act 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 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article “the maintenance period” means the period of 5 years beginning with the date of final commissioning except where the authorised development is landscaping where “the maintenance period” means such period as set out in the landscape and ecological mitigation and management strategy which is approved by Central Bedfordshire Council pursuant to Requirement 3 beginning with the date on which that part of the landscaping is completed provided that such period shall not exceed 10 years.

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(a) 2017 c.20

(12) The provisions of the Neighbourhood Planning Act 2017 do not apply insofar as they relate to temporary possession of land under this article in connection with the maintenance of the authorised development.

### **Statutory undertakers**

29. Subject to the provisions of Schedule 10 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
- (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to statutory undertakers on, under, over or within the Order land; and
- (c) create and acquire compulsorily the rights and/or impose restrictions over any Order land belonging to statutory undertakers.

### **Apparatus and rights of statutory undertakers in streets**

30.—(1) Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 10 (construction and maintenance of new or altered means of access) or article 11 (temporary prohibition or restriction of use of streets) or where a street is stopped up under article 12 (stopping up of streets) any statutory undertaker 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 10 (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) This article does not have effect in relation to apparatus to which article 30 (apparatus and rights of statutory undertakers in streets) or Part 3 (water supply) of the 1991 Act applies.

(4) In this article—

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

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

## **PART 6 OPERATIONS**

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(a) 2003 c. 21.

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

32.—(1) The undertaker may, subject to paragraph (3), fell or lop any tree or shrub within or overhanging land within the Order limits 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) The undertaker may, for the purposes of the authorised development and subject to paragraph (3), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development.

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

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

(5) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(a).

## **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**

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(a) S.I. 1997/1160.



**34.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

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

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

- (a) 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), of the Control of Pollution Act 1974<sup>(b)</sup>; or
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) 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 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protective provisions**

**36.** Schedule 10 (protective provisions) has effect.

### **Amendment and Modification of statutory provisions**

**37.** The Rookery South (Resource Recovery Facility) Order 2011 is to be amended for the purposes of this Order only as set out in Schedule 11 (modifications to the Rookery South (Resource Recovery Facility) Order 2011).

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

**38.—**(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in Table 11 of Schedule 14 (documents and plans to be certified) to this Order 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**

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

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

(b) 1974 c.40. Section 61 was amended by section 162 of and paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 (c.43). There are other amendments not relevant to this Order.

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

- (a) in the case of the secretary or clerk of 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**

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(a) 1978 c.30.

**40.**—(1) Where an application is made to or a request is made of the relevant planning authorities, highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 10 (protective provisions) for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements but including the protective provisions contained in Schedule 10), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 12 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements in Schedule 2 (requirements).

(3) Save for applications made pursuant to Schedule 12 (procedure for discharge of requirements) and where stated to the contrary if, within eight weeks after the application or request has been submitted to an authority, beneficiary of protective provisions 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 notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(4) The procedure set out in paragraph 1(3) of Schedule 12 (procedure for discharge of requirements) has effect in relation to any refusal by an authority, beneficiary of protective provisions, or an owner as referred to in paragraph (1) of this article to any consent, agreement or approval required under this Order, including such as may be required pursuant to the protective provisions contained within Schedule 10 (protective provisions).

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (3).

### **Arbitration**

**41.**—(1) 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.

### **Funding**

**42.**—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security and the amount of that security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant power in relation to that land.

(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 19 (statutory authority to override easements and other rights);
- (c) article 21 (compulsory acquisition of rights etc);
- (d) article 22 (private rights);
- (e) article 24 (acquisition of subsoil only);
- (f) article 26 (rights under or over streets);
- (g) article 27 (temporary use of land for carrying out the authorised development);

- (h) article 28 (temporary use of land for maintaining the authorised development); and
- (i) article 29 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security 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.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

### **Low Level Restoration Scheme**

43. Insofar as compliance with any article of this Order or any requirement in Schedule 2 (requirements) prevents the undertaker from complying with any condition contained in the planning permission granted under the Town and Country Planning Act 1990 for the low level restoration scheme for Rookery South Pit (reference number BC/CM/2000/8), the undertaker shall not be in breach of that condition.

Signed by the authority of the Secretary of State for Business, Energy and Industrial Strategy

13th March 2019

*Gareth Leigh*  
Head of Energy Infrastructure Planning  
Department for Business, Energy and Industrial Strategy

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

In Central Bedfordshire—

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, and associated development under section 115(1)(b) of that Act consisting of a generating station with a gross rated electrical output of up to 299MWe comprising all or part of—

**Work No. 1A** development comprising a generating station including—

- (a) 1 gas turbine generator;
- (b) 1 exhaust gas emission flue stack; and
- (c) external fin fan cooler(s),

**Work No. 1B** development comprising a generating station and gas and electrical infrastructure including—

- (a) a control room/office/workshop;
- (b) telemetry apparatus;
- (c) a fire water tank;
- (d) a demineralised water storage tank;
- (e) an emergency generator including fuel storage tank;
- (f) gas pipeline and telemetry cabling and cathodic protection test/ transformer rectifier unit;
- (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 kiosks;
  - (iv) emergency generator including fuel storage tank;
  - (v) Joule-Thomson boiler(s); and
  - (vi) control and instrumentation kiosks,

**Work No. 1C** development comprising a generating station and electrical infrastructure including a transformer compound, generator step up transformer, unit and other transformers, overhead conductor gantry, overhead conductors and other plant and structures required to manage the transmission of electricity,

**Work No. 1D** development comprising a generating station including—

- (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) a maintenance compound including hardstanding and welfare and administration facilities;
- (e) site drainage and waste management infrastructure, including relocation of existing infrastructure as required;

- (f) electricity, water, wastewater and telecommunications and other services including high voltage and low voltage cabling, equipment and controls and associated telemetry and electrical protection auxiliary cabling;
- (g) landscaping including tree planting, temporary and permanent fencing and other boundary treatments and ecological mitigation; and
- (h) other ancillary equipment.

**Work No. 2A** development comprising the creation of a junction with Green Lane, maintenance of an existing access road between Green Lane and Rookery South Pit, including permanent road surface and kerb stones, fencing, safety barrier(s), signing and road markings works, footway, drainage (including culverts), electricity and telecommunications connections and other services and other incidental works,

**Work No. 2B** development comprising a new means of access, including permanent road surface and kerb stones, safety barrier(s), signing and road markings works, footway, drainage (including culverts), electricity and telecommunications connections and other services and other incidental works,

**Work No. 3A** development comprising gas infrastructure including—

- (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, temporary and permanent fencing and other boundary treatments and ecological mitigation,

**Work No. 3B** development comprising creation of a permanent access and a construction access from an existing agricultural track into numbered work 3A, upgrading of an existing agricultural track and junction between Houghton Lane and numbered work 3A, including permanent road surface and kerb stones, signing and road markings works, drainage (including culverts), electricity and telecommunications connections and other services and other incidental works,

**Work No. 4A** development comprising a gas pipeline including—

- (a) a new underground gas pipeline connection and telemetry cabling, approximately 1.8km in length connecting 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) works required in order to protect existing utilities infrastructure;
- (e) tree and hedge removal;
- (f) landscaping including tree planting, temporary and permanent fencing and other boundary treatments and ecological mitigation; and
- (g) creation of construction access from Houghton Lane,

**Work No. 4B** development comprising a construction laydown area including areas of hardstanding and site and welfare offices and workshop;

**Work No. 5** development comprising an electrical substation and electrical infrastructure including—

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

**Work No. 6** development comprising works to construct a 400kV electrical connection between transmission towers ZA377 and ZA379 and Work No.5 and mitigation works for Work Nos. 1, 3, 5, 6 and 7 including—

- (a) 400 kV sealing end compounds (including downleads to connect to the new transmission tower);
- (b) underground or ducted high voltage electrical cables and associated telemetry and electrical protection auxiliary cabling and below ground drainage works;
- (c) security infrastructure including perimeter fencing with gates, security cameras, site lighting infrastructure, including perimeter lighting columns;
- (d) permanent means of access from the low level restoration scheme secondary access to numbered work 6(a), taking the form of an agricultural hard-core track not more than 6 m wide and creation of permanent diversion of the low level restoration scheme secondary access;
- (e) temporary means of access;
- (f) landscaping including bunds, tree planting, temporary and permanent fencing and other boundary treatments and ecological mitigation;
- (g) site drainage;
- (h) a new transmission tower (including downleads to connect to the sealing end compounds); and
- (i) removal of transmission tower ZA378,

**Work No 7** development comprising works to, and installation of, transmission towers and mitigation works for Work Nos. 1, 3, 5, 6 and 7 including—

- (a) erection and later removal of temporary transmission tower(s);
- (b) erection and later removal of scaffolding, stringing of conductors forming a temporary diversion of the existing 400kV transmission line;
- (c) erection and later removal of scaffolding, re-stringing of conductors in the alignment of the existing 400 kV transmission line;
- (d) tree, hedge and fence removal;
- (e) security infrastructure including temporary perimeter fencing with gates, security cameras and site lighting; and
- (f) landscaping including tree planting, fencing and ecological mitigation,

**Work No. 8** development comprising a construction laydown area(s) including areas of hardstanding and site and welfare offices and workshops,

and such other buildings, structures, 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 but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.



## SCHEDULE 2 REQUIREMENTS

Article 3

### Time limits

1. The authorised development must commence no later than the expiration of five years beginning with the date this Order comes in to force.

### Detailed design approval

2.—(1) The authorised development must be carried out in accordance with the approved plans listed in Table 1 below, inclusive of any limits of deviation, and any other plans, drawings, documents, details, schemes, statements or strategies which are approved by the relevant planning authorities pursuant to any requirement (as the same may be amended by approval of the relevant planning authorities pursuant to requirement 19)—

**Table 1**

Works plans
Rights of way, streets and access plan
The access road visibility splay plan

(2) The authorised development must be carried out in accordance with the parameters specified below (as the same may be amended by approval of the relevant planning authorities pursuant to requirement 19)—

**Table 2**

<i>Building or structure</i>	<i>Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i>	<i>Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i>	<i>Maximum length (metres)</i>	<i>Minimum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum width (metres)</i>
The gas turbine generator (including gas turbine, generator, air inlet filter house, air inlet duct, exhaust diffuser, and auxiliaries such as lube oil	27	—	50	—	40	—

<b><i>Building or structure</i></b>	<b><i>Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i></b>	<b><i>Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i></b>	<b><i>Maximum length (metres)</i></b>	<b><i>Minimum length (metres)</i></b>	<b><i>Maximum width (metres)</i></b>	<b><i>Minimum width (metres)</i></b>
system, air dryers, fuel gas filter package, instrument air system, compressor washing) (Part of numbered work 1A)						
The exhaust gas emission flue stack (part of numbered work 1A)	35	32.5	12	–	12	–
Control room/office/workshop (part of numbered work 1B)	7	–	45	–	25	–
Emergency generator (part of numbered work 1B)	6	–	13	–	5	–
Raw/fire water tank (part of numbered work 1B)	15	–	15	–	15	–
Demineralised water tank (part of numbered work 1B)	5	–	5	–	5	–
Gas receiving station (including compression station, emergency generator, Joule-Thompson boilers and other auxiliary	10	–	70	–	50	–

<b><i>Building or structure</i></b>	<b><i>Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i></b>	<b><i>Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i></b>	<b><i>Maximum length (metres)</i></b>	<b><i>Minimum length (metres)</i></b>	<b><i>Maximum width (metres)</i></b>	<b><i>Minimum width (metres)</i></b>
control cabinets) (part of numbered work 1B)						
Fin Fan Cooler(s) (part of numbered work 1A)	10	–	28	–	14	–
Transformer compound (including generator step up transformer, unit and other transformers, overhead line gantry and associated equipment) (part of numbered work 1C)	15	–	65	–	60	–
Gatehouse (part of numbered work 1D)	4.5	–	9	–	8	–
Above ground installation (numbered work 3A)*	3	–	85	–	35	–
Pipeline inspection gauge facility (part of numbered work 3A)*	3	–	35	–	30	–
Minimum offtake connection (part of numbered work 3A)*	3	–	35	–	35	–
Substation (including the auxiliary building) (part of	14	–	200	–	150	–

<i>Building or structure</i>	<i>Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i>	<i>Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i>	<i>Maximum length (metres)</i>	<i>Minimum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum width (metres)</i>
numbered work 5)						
Each sealing end compound (part of numbered work 6)**	17	–	45	–	35	–
Transmission tower (part of numbered work 6)**	49	–	40	–	30	–
Each temporary tower or mast (part of numbered work 7)**	55	–	47	–	32	–

\* Existing site level is approximately 70m AOD

\*\* Existing site level is approximately 49m AOD

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

(4) Except to the extent approved pursuant to requirement 5, numbered works 1, 3A, 5 and 6(a) must 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 authorities.

### **Provision of landscaping and ecological mitigation**

3. Each of numbered works 1, 2, 3A, 4, 5, 6 and 7 of the authorised development must not commence until, for that numbered work, a written strategy substantially in accordance with the outline landscape and ecological mitigation and management strategy has been submitted to and approved by Central Bedfordshire Council. The strategy must include details of all proposed hard and soft landscaping works and ecological mitigation measures and include details of—

- (a) the 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;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) bunds and proposed finished ground levels;
- (d) hard surfacing materials;

- (e) measures for the management of the ecological resources that will remain within the Order land on completion of the authorised development.

### **Implementation and maintenance of landscaping and ecological mitigation measures**

4.—(1) All landscaping works and ecological mitigation measures must be carried out in accordance with the strategy approved under requirement 3.

(2) The landscaping works and ecological mitigation measures must be carried out in accordance with implementation timetables approved in the strategy approved under requirement 3.

### **Highway accesses**

5.—(1) Numbered work 1 of the authorised development must not commence until either the Rookery South access road and numbered work 2B have been completed to a suitable standard for construction or the junction with Green Lane (comprising part of numbered work 2A) and numbered work 2B have been completed to a suitable standard for construction.

(2) Each of numbered works 2, 3 and 6 of the authorised development must not 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 Table 1 of requirement 2) of any new permanent or temporary means of access to a highway to be used by vehicular traffic, 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 authorities (in consultation with the highway authority).

(3) The highway accesses must be constructed in accordance with the approved details.

(4) Following the completion of construction of numbered work 2, unless the Rookery South access road is constructed pursuant to the Rookery South (Resource Recovery Facility) Order 2011, the access road visibility splay must be kept clear at all times of obstructions, buildings and vegetation that may obstruct or impair visibility from or to Green Lane to or from numbered work 2.

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

6.—(1) Each of numbered works 1, 3A, 4, 5, 6 and 7 of the authorised development must not commence 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 Central Bedfordshire Council.

(2) Numbered work 2A of the authorised development must not commence until written details of any proposed permanent fence or other means of enclosure for that numbered work have been submitted to and approved by Central Bedfordshire Council (and approved by Network Rail in accordance with paragraph 68 of Schedule 10).

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

(4) The fencing and other means of enclosure must be constructed and maintained in accordance with the approved details.

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

7.—(1) Each of numbered works 1, 2, 3A, 5 and 6 must not commence until, for that numbered work, written details of the surface and foul water drainage strategy, which shall incorporate appropriate elements of the low level restoration scheme drainage strategy where applicable, for the construction and operational phases of the authorised development have been submitted to and approved by Central Bedfordshire Council.

(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.

### **Contamination and groundwater**

**8.**—(1) Each of numbered works 1 to 8 must not commence until, for that numbered work, a scheme (which may be included in the construction environment management plan) to deal with the contamination of any land, including groundwater, which is likely to cause significant harm to persons or significant pollution of controlled waters or the environment and ground conditions relevant to foundation design and ground stability has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by Central Bedfordshire Council, to include groundwater baseline monitoring and assessment and to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) The scheme must include an investigation and assessment report to identify ground conditions and ground stability matters and must identify appropriate foundation design measures.

(4) Remediation must be carried out in accordance with the approved scheme.

(5) Foundation design measures must be carried out in accordance with the approved scheme.

### **Archaeology**

**9.**—(1) Each of numbered works 3A, 4A, 6 and 7(a) of the authorised development must not commence until, for that numbered work, a written scheme of archaeological investigation has been submitted to and approved in writing by Central Bedfordshire Council. The submitted written scheme of archaeological investigation must include the following –

- (a) 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;
- (b) provision to be made for publication and dissemination of the results of any assessment made pursuant to sub-paragraph (a), including for public benefit and understanding, should the nature of the archaeology warrant it; and
- (c) provision to be made for the deposition of the finds assemblage and the site archive.

(2) The archaeological investigation must be carried out in accordance with the approved scheme.

### **Construction Environment Management Plan**

**10.**—(1) Each of numbered works 1 to 8 of the authorised development must not commence until a construction environment management plan covering that numbered work has been submitted to and approved by the relevant planning authorities. The final construction environment management plan must be substantially in accordance with the outline construction environment management plan and must include the following—

- (a) the construction and phasing programme;
- (b) liaison procedures to discuss and agree all relevant construction aspects with the relevant planning authorities;
- (c) complaints procedures;
- (d) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, lighting, noise and vibration);
- (e) waste management;

- (f) an assessment of the site specific risks to and mitigation measures designed to protect controlled waters (surface and groundwaters) including pollution incident control;
- (g) procedure for crossing watercourses (by reference to best practice methods);
- (h) 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);
- (i) security measures;
- (j) measures for the maintenance of construction equipment;
- (k) restoration of site following completion of construction; and
- (l) liaison procedures with all other contractors working within Rookery Pit regarding programmed construction movements and processes.

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

### **Construction traffic management plan**

**11.**—(1) Each of numbered works 1 to 8 of the authorised development must not commence until, for that numbered work, a construction traffic management plan has been submitted to and approved by the relevant planning authorities in consultation with the relevant highway authorities and Marston Moreteyne Parish Council (and approved by Network Rail in accordance with paragraph 70 of Schedule 10). The construction traffic management plan must be substantially in accordance with the outline construction traffic management measures and must include the following—

- (a) construction vehicle routing plans;
- (b) site access plans;
- (c) measures to ensure the protection of users of any footpath within the Order limits which may be affected by the construction of the authorised development;
- (d) proposals for the management of junctions to and crossings of highways and other public rights of way;
- (e) proposals for the scheduling and timing of movements of heavy commercial vehicles (as defined in section 138 of the 1984 Act) relating to the construction of the authorised development including details of abnormal indivisible loads and, if applicable, taking into account the anticipated scheduling and timing of movements of any heavy commercial vehicles (as defined in section 138 of the 1984 Act) relating to the construction of the development authorised by the Rookery South (Resource Recovery Facility) Order 2011;
- (f) details of escorts for abnormal indivisible loads;
- (g) proposals for temporary warning signs and banksman and escort details;
- (h) details of any temporary or permanent improvements to highways;
- (i) 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;
- (j) proposals for traffic management controls (such as temporary signals) to ensure the safe operation of Green Lane level crossing;
- (k) proposals for signage at suitable intervals along the Rookery South access road or numbered work 2A (as appropriate) restricting the speed of vehicles using the Rookery South access road or numbered work 2A (as appropriate) in connection with the construction of the authorised development such speed limit to be no more than 15 miles per hour; and

- (1) details of any amendments required by Network Rail pursuant to paragraph 70(4) of Part 7 of Schedule 10 (protective provisions) and an explanation of how such amendments have been taken into account.
- (2) The construction traffic management plan must be implemented as approved.

### **Control of noise during operation**

**12.**—(1) Prior to the date of final commissioning a written noise scheme providing for the control of noise generated during the operation of the authorised development must be submitted to and approved by Central Bedfordshire Council. The noise scheme must include the following:

- (a) the locations at which noise will be monitored;
- (b) the defined representative background sound level at South Pilling Farm house;
- (c) the method of noise measurement (which must be in accord with BS 4142:2014, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances) and when such measurements will be carried out; and
- (d) a complaints procedure.

(2) Except in the case of an emergency, noise (in terms of the BS 4142:2014 rating level) emitted from the operation of the authorised development must be no greater than the defined representative background sound level as approved in the noise scheme submitted pursuant to sub-paragraph (1).

- (3) The noise scheme must be carried out as approved.

### **Control of noise during construction**

**13.**—(1) No part of the authorised development may commence until a written construction noise monitoring scheme providing for the monitoring of noise generated during the construction of the authorised development has been submitted to and approved in writing by Central Bedfordshire Council. The construction noise monitoring scheme must include the following:

- (a) the locations at which the noise will be monitored;
- (b) the frequency of noise monitoring corresponding to the construction programme and the change in plant, equipment and working practices likely to affect noise conditions during the construction programme;
- (c) the defined representative background sound level at South Pilling Farm house;
- (d) the method of noise measurement and establishment of noise limits (which must be in accordance with BS 5228:2009, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances);
- (e) a procedure for the periodic review of the construction noise monitoring scheme relating to the frequency of noise monitoring and the need for continued monitoring corresponding to the construction programme; and
- (f) a complaints procedure.

- (2) The construction noise monitoring scheme must be carried out as approved.

### **Construction hours**

**14.**—(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 Central Bedfordshire Council.



(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.

### **Lighting strategy**

15.—(1) Each of numbered works 1, 3A and 5 must not commence until a written scheme for the management and mitigation of artificial light emissions for that numbered work which is substantially in accordance with the outline lighting strategy has been submitted to and approved by Central Bedfordshire Council.

(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.

### **Construction Travel Plan**

16.—(1) Each of numbered works 1 to 8 of the authorised development must not commence until, for that numbered work, a construction worker travel plan has been submitted to and approved by the relevant planning authorities. The construction worker travel plan must be substantially in accordance with the outline travel plan (other than the measures which relate to the operational phase).

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

### **Operating hours**

17. Subject to requirement 19, the undertaker is not permitted to operate the generating station comprised in the authorised development for a greater number of hours than that assessed in the environmental statement.

### **Decommissioning strategy**

18.—(1) Subject to obtaining the necessary consents and unless otherwise agreed with Central Bedfordshire Council, within twenty four months of the Order land 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 work 1 must be submitted to Central Bedfordshire Council.

(2) The demolition and removal of numbered work 1 must be implemented in accordance with the approved scheme.

(3) On the one year anniversary of the Order land 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 Central Bedfordshire Council of the same.

### **Amendments to approved details**

19.—(1) Subject to paragraph (2), with respect to the approved plans specified in requirement 2(1), the parameters specified in requirement 2(2), any details requiring compliance within any other requirement and any other plans, details or schemes which require approval by the relevant planning authorities pursuant to any other requirement (the “Approved Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authorities for approval any amendments to the Approved Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authorities the Approved Plans, Parameters, Details or Schemes is to be taken to include the amendments approved pursuant to this subparagraph.

(2) Approval under sub-paragraph (1) must not be given except where it has been demonstrated to the satisfaction of the relevant planning authorities that the subject-matter of the approval sought is unlikely to 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).

### **Low Level Restoration Scheme**

**20.** No part of the authorised development may commence until the low level restoration scheme baseline works have been completed to the reasonable satisfaction of Central Bedfordshire Council.

### **Air Safety**

**21.—(1)** Numbered work 1A(b) of the authorised development must not commence until the following details have been submitted to the Defence Geographic Centre:

- (a) the precise location of numbered work 1A(b);
- (b) the date of commencement of construction of numbered work 1A(b);
- (c) the anticipated date of completion of construction of numbered work 1A(b);
- (d) the height above ground level of the tallest structure; and
- (e) the maximum extension height of any construction equipment.

SCHEDULE 3

Article 8

STREETS SUBJECT TO PERMANENT AND TEMPORARY  
ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

**Table 3**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
Central Bedfordshire Council	Green Lane	Installation of signage and markings between the points marked A and B on the rights of way, streets and access plan to facilitate the construction and operation of numbered work 2.
Bedford Borough Council	Green Lane	Installation of signage and markings between the points marked A and B on the rights of way, streets and access plan to facilitate the construction and operation of numbered work 2.
Central Bedfordshire Council	Green Lane	Creation of new access comprising part of numbered work 2A including the lowering of the levels of the kerb between the points marked C and D on the rights of way, streets and access plan to provide permanent access to numbered works 1 and 5.
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	Creation of new access comprising part of numbered work 2A including the lowering of the levels of the kerb between the points marked E and F on the rights of way, streets and access plan to provide permanent access to numbered works 1 and 5.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	Creation of new access comprising part of numbered work 2 between the points marked G and I on the rights of way, streets and access plan to provide permanent access to numbered works 1 and 5.
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	Upgrading the existing access comprising numbered work 3B between the points marked MM and NN on the rights of way, streets and access plan to provide permanent access to numbered work 3A.
Central Bedfordshire Council	Houghton Lane	Upgrading the existing access comprising numbered work 3B between the points marked OO and PP on the rights of way, streets and access plan to provide permanent access to numbered work 3A.
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	Creation of new access comprising part of numbered work 3B between the points marked QQ and RR on the rights of way, streets and access plan to provide permanent access to numbered work 3A.
Central Bedfordshire Council	low level restoration scheme secondary access track	Creation of new access comprising part of numbered work 6 within the area shown on the rights of way, streets and access plan with orange hatching to provide permanent access to numbered work 6(a).

## PART 2

### TEMPORARY ALTERATION OF LAYOUT

**Table 4**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	Creation of new access comprising part of numbered work 3B between the points marked RR and NN on the rights of way, streets and access plan to provide construction access to numbered work 3A.
Central Bedfordshire Council	Houghton Lane	Creation of new access comprising part of numbered work 4A between the points marked GG and HH on the rights of way, streets and access plan to provide construction access both north and south of Houghton Lane.

SCHEDULE 4

Article 9

STREETS SUBJECT TO STREET WORKS

**Table 5**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street Subject to Street Works</i>	<i>(3)</i> <i>Description of the street works</i>
Central Bedfordshire Council	Green Lane	Works to enable the creation of an access and to place and maintain apparatus (comprising numbered work 2A) for use during construction and operation between the points marked A and B and C and D on the rights of way, streets and access plan.
Bedford Borough Council	Green Lane	Works to enable the creation of an access and to place and maintain apparatus (comprising numbered work 2A) for use during construction and operation between the points marked A and B on the rights of way, streets and access plan.
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	Works to enable the creation of an access and to place and maintain apparatus (comprising numbered work 2A) for use during construction and operation between the points marked E and F on the rights of way, streets and access plan.
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	Works to maintain the existing access and to place and maintain apparatus (comprising numbered work 2A) for use during construction and operation between the points marked F and G on the rights of way, streets and access plan.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street Subject to Street Works</i>	<i>(3)</i> <i>Description of the street works</i>
Central Bedfordshire Council	Established agricultural access tracks between South Pillinge Farm and Rookery South Pit	Works for numbered work 6 to be installed in the street between the points marked J and K on the rights of way, streets and access plan.
Central Bedfordshire Council	Established agricultural access tracks between South Pillinge Farm and Rookery South Pit	Works for numbered work 6 to be installed in the street between the points marked L and M on the rights of way, streets and access plan.
Central Bedfordshire Council	Public Footpath 65	Works for numbered work 4A to be installed in the street between the points marked O and P on the rights of way, streets and access plan.
Central Bedfordshire Council	Houghton Lane	Works for numbered work 4A to be installed under the street between the points marked GG and HH on the rights of way, streets and access plan.
Central Bedfordshire Council	Public Footpath 7	Works for numbered work 4A to be installed in the street between the points marked JJ and KK on the rights of way, streets and access plan.
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	Works to upgrade the existing access (comprising numbered work 3B) and to place and maintain apparatus for use during construction and operation and works for numbered work 4A to be installed in the street between the points marked MM and NN on the rights of way, streets and access plan.
Central Bedfordshire Council	Houghton Lane	Works to upgrade the existing junction (comprising numbered work 3B) for use during construction and operation between the points marked OO and PP on the rights of way, streets and access plan.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street Subject to Street Works</i>	<i>(3)</i> <i>Description of the street works</i>
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	Works to enable the creation of an access (comprising numbered work 3B) for use during operation between the points marked QQ and RR on the rights of way, streets and access plan.
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	Works to enable the creation of an access (comprising numbered work 3B) for use during construction between the points marked RR and NN on the rights of way, streets and access plan.
Central Bedfordshire Council	low level restoration scheme secondary access track	Works for numbered work 4A to be installed in the street between the points marked BB and CC on the rights of way, streets and access plan.
Central Bedfordshire Council	low level restoration scheme secondary access track	Works for numbered work 4A to be installed in the street between the points marked CC and DD on the rights of way, streets and access plan.
Central Bedfordshire Council	low level restoration scheme secondary access track	Works to enable the creation of an access (comprising part of numbered work 6) within the area shown on the rights of way, streets and access plan with orange hatching to provide permanent accesses to numbered work 6(a).
Central Bedfordshire Council	Houghton Lane	Works to enable the creation of an access (comprising part of numbered work 4A) for use during construction between the points marked GG and HH on the rights of way, streets and access plan.



SCHEDULE 5

Article 10

ACCESS

PART 1

THOSE PARTS OF THE ACCESSSES TO BE MAINTAINED AT THE PUBLIC EXPENSE

**Table 6**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
Central Bedfordshire Council	Green Lane	The signage and markings installed in the area hatched blue between points A and B as shown on the rights of way, streets and access plan.
Bedford Borough Council	Green Lane	The signage and markings installed in the area hatched magenta between points A and B as shown on the rights of way, streets and access plan.
Central Bedfordshire Council	Houghton Lane	The upgraded access constituting part of numbered work 3B and shown on the rights of way, streets and access plan hatched blue between points OO and PP.

## PART 2

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

**Table 7**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of access</i>
Central Bedfordshire Council	Green Lane	The access constituting part of numbered work 2A and shown on the rights of way, streets and access plan hatched red between points C and D.
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	The access constituting part of numbered work 2A and shown on the rights of way, streets and access plan hatched red between points E and F.
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	The access constituting part of numbered work 2A and shown on the rights of way, streets and access plan hatched red between points F and G.
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	The access constituting part of numbered work 2B and shown on the rights of way, streets and access plan hatched red between points G and I.
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	The access constituting part of numbered work 3B and shown on the rights of way, streets and access plan hatched red between points MM and NN.
Central Bedfordshire Council	low level restoration scheme secondary access track	The access to the sealing end compounds constituting part of numbered work 6 to be provided within the area shown on the rights of way, streets and access plan hatched orange.

### PART 3

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

**Table 8**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	The creation of a temporary access comprising part of numbered work 3B and shown on the rights of way, streets and access plan hatched red between points marked RR and NN to provide temporary access to numbered work 3A.
Central Bedfordshire Council	Houghton Lane	Creation of temporary access comprising part of numbered word 4A between the points marked GG and HH on the rights of way, streets and access plan to provide construction access both north and south of Houghton Lane.

SCHEDULE 6

Article 11

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS

Table 9

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to temporary prohibition or restriction of use</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
Central Bedfordshire Council	Green Lane	<p><b>Prohibition/Restriction:</b> From the points marked A to B on the rights of way, streets and access plan being approximately 250m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street and restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>
Bedford Borough Council	Green Lane	<p><b>Prohibition/Restriction:</b> From the points marked A to B on the rights of way, streets and access plan being approximately 250m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street and partial restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</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
Central Bedfordshire Council	Access Road serving Rookery North and South Pits including footpath(s)	<p><b>Prohibition/Restriction:</b> From the points marked E to F on the rights of way, streets and access plan being approximately 33m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street and partial restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>
Central Bedfordshire Council	Access Road serving Rookery North and South Pits including footpath(s)	<p><b>Prohibition/Restriction:</b> From the points marked F to G on the rights of way, streets and access plan being approximately 844m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street and partial restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>
Central Bedfordshire Council	Established agricultural access tracks between South Pillinge Farm and Rookery South Pit	<p><b>Prohibition/Restriction:</b> From the points marked J to K on the rights of way, streets and access plan being approximately 132m.</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
		<p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered works 5, 6 and 7.</p>
Central Bedfordshire Council	Established agricultural access tracks between South Pillinge Farm and Rookery South Pit	<p><b>Prohibition/Restriction:</b> From the points marked L to M on the rights of way, streets and access plan being approximately 100m</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered works 5, 6 and 7.</p>
Central Bedfordshire Council	Public Footpath 65	<p><b>Prohibition/Restriction:</b> From the points marked N to O on the rights of way, streets and access plan being approximately 10m</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Public Footpath 65	<p><b>Prohibition/Restriction:</b> From the points marked O to P on the rights of way, streets and access plan being approximately 30m.</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
		<p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Public Footpath 65	<p><b>Prohibition/Restriction:</b> From the points marked P to Q on the rights of way, streets and access plan being approximately 10m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Layby on Station Road	<p><b>Prohibition/Restriction:</b> From the points marked R to S on the rights of way, streets and access plan being approximately 25m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction and then removal of numbered work 7.</p>
Central Bedfordshire Council	Station Lane	<p><b>Prohibition/Restriction:</b> From the points marked T to U on the rights of way, streets and access plan being approximately 195m.</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
		<p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction and then removal of numbered work 7.</p>
Central Bedfordshire Council	Public Footpath 7 and low level restoration scheme secondary access track	<p><b>Prohibition/Restriction:</b> From the points marked V to W on the rights of way, streets and access plan being approximately 20 m</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and public footpath and restriction of the use of the street and public footpath in order to facilitate the construction and then removal of numbered work 7 and the construction of numbered work 6.</p>
Central Bedfordshire Council	Public Footpath 14	<p><b>Prohibition/Restriction:</b> From the points marked X to Y on the rights of way, streets and access plan being approximately 168m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction and then removal of numbered work 7 and the construction of numbered work 6.</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
Central Bedfordshire Council	low level restoration scheme secondary access track	<p><b>Prohibition/Restriction:</b> From the points marked BB to DD on the rights of way, streets and access plan being approximately 260m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the track and restriction of the use of the track (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>
Central Bedfordshire Council	Established agricultural access track adjacent to plantation leading from Station Lane	<p><b>Prohibition/Restriction:</b> From the points marked EE to FF on the rights of way, streets and access plan being approximately 140m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered works 6 and 7.</p>
Central Bedfordshire Council	Houghton Lane	<p><b>Prohibition/Restriction:</b> From the points marked GG to HH on the rights of way, streets and access plan being approximately 30m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered work 4A.</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
Central Bedfordshire Council	Public Footpath 7	<p><b>Prohibition/Restriction:</b> From the points marked II to JJ on the rights of way, streets and access plan being approximately 32m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Public Footpath 7	<p><b>Prohibition/Restriction:</b> From the points marked JJ to KK on the rights of way, streets and access plan being approximately 35m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Public Footpath 7	<p><b>Prohibition/Restriction:</b> From the points marked KK to LL on the rights of way, streets and access plan being approximately 12m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</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
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	<p><b>Prohibition/Restriction:</b> From the points marked MM to NN on the rights of way, streets and access plan being approximately 155m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered work 3 and numbered work 4.</p>
Central Bedfordshire Council	Houghton Lane	<p><b>Prohibition/Restriction:</b> From the points marked OO to PP on the rights of way, streets and access plan being approximately 25m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street (including the use of traffic management measures) in order to facilitate the construction of numbered work 3.</p>

SCHEDULE 7

Article 12

STREETS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
Central Bedfordshire Council	low level restoration scheme secondary access track	From the points marked Z to AA on the rights of way, streets and access plan being approximately 110m.	Commencing at point Z and finishing at point AA using a route within the area marked with orange hatching on the rights of way, streets and access plan.

**MODIFICATION OF COMPENSATION AND COMPULSORY  
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS  
AND IMPOSITION OF NEW RESTRICTIONS**

*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 limitation to the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(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 5(3)—

- (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.—**(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in sub-paragraph (2) .

(2) For section 5A (5A) (relevant valuation date) of the 1961 Act, for (a) and (b) substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the Millbrook Gas Fired Generating Station Order 2019; and
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 to the Millbrook Gas Fired Generating Station Order 2019 to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

*Application of Part 1 of the 1965 Act*

**4.—**(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the acquisition of land under article 18 (compulsory acquisition of land etc.), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 21 (compulsory acquisition of rights)—

- (a) with the modification specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

**5.—**(1) The modifications referred to in paragraph 4(1)(a) are as follows.

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(a) 1973 c.26.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be 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 the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) 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.”.

(4) 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.

(5) Section 11 (powers of entry) of the 1965 Act is modified as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 18 (compulsory acquisition of land), 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; and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on a specified date), 12(c) (penalty for unauthorised entry) and 13(d) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(e) 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.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(3) (modification of Part 1 of the Compulsory Purchase Act 1965) is also 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 or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For schedule 2A to the 1965 Act substitute—

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- (a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
  - (b) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).
  - (c) Section 12 was amended by section 56(2) of and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
  - (d) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
  - (e) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

## “SCHEDULE 2A

### COUNTER-NOTICE REQUIRING PURCHASE OF LAND

#### **Introduction**

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Millbrook Gas Fired Generating Station Order 2019 in respect of the land to which the notice to treat relates.

(2) But see article 24(3) (acquisition of subsoil only) of the Millbrook Gas Fired Generating Station Order 2019 which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

#### **Counter-notice requiring purchase of land**

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

#### **Response to counter-notice**

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

#### **Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

- 11.** In making its determination, the Upper Tribunal must take into account—
- (a) the effect of the acquisition of the right or the imposition of the covenant,
  - (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
  - (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”



SCHEDULE 9

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

**Table 10**

<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>
Land forming part of disused clay pit (Rookery Pit) situated to the south of Green Lane and east of South Pilling Farm, Millbrook	1A_PGP	Temporary use (including the installation and use of site office and welfare facilities) to facilitate numbered work 8	Numbered work 8
Land forming part of disused clay pit (Rookery Pit) situated to the south of Green Lane and north east of South Pilling Farm, Millbrook	1B_PGP	Temporary use (including the installation and use of site office and welfare facilities) to facilitate numbered work 8	Numbered work 8
Land forming part of disused clay pit (Rookery Pit) situated to the south of Green Lane and north east of South Pilling Farm, Millbrook	5A_PGP	Temporary use to facilitate construction for numbered work 2A	Numbered work 2A
Land and access track situated to the west of premises known as Moreteyne House and south of Station Lane crossing, Millbrook	1_EC	Temporary use to facilitate construction for numbered works 6 and 7	Part of numbered works 6 and 7
Land forming part of electricity compound overhead transmission lines and pylon situated to the south of premises known as Moreteyne House, Millbrook	2_EC	Temporary use (including the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line) to facilitate construction for numbered works 6 and 7	Part of numbered works 6 and 7

<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>
Land forming part of Millbrook Vehicle Proving Ground and electricity transmission lines situated south of premises known as Moreteyne House, Millbrook, Millbrook	3_EC	Temporary use (including the erection and use of scaffolding, the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line) to facilitate construction for numbered works 6 and 7	Part of numbered works 6 and 7
Land forming part of public adopted highway known as Statin Lane, part lay-by and overhead electricity transmission lines situated to the east of the Millbrook Vehicle Proving Ground and south of Pillinge Cottages, Millbrook	4_EC	Temporary use (including the erection and use of scaffolding, the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line) to facilitate construction for numbered works 6 and 7	Part of numbered works 6 and 7
Land forming part of agricultural land and overhead electricity transmission lines and pylon situated to the east of Station Lane and south of South Pillinge Farm, Millbrook	5_EC	Temporary use (including the erection and use of scaffolding, the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line) to facilitate construction for numbered works 6 and 7	Part of numbered works 6 and 7
Land forming part of disused clay pit (Rookery Pit) situated to the east of South Pillinge Farm, Millbrook	10_EC	Temporary use to facilitate construction for numbered works 5 and 6	Part of numbered works 5 and 6

<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>
Land forming part of disused clay pit (Rookery Pit) and overhead electricity transmission lines and access track situated to the east of South Pilling Farm, Millbrook	11_EC	Temporary use (including the erection and use of scaffolding, the installation and use of a cable winch, the oversailing for the temporary diversion of the existing 400kV transmission line and the passing and re-passing of users of public footpaths) to facilitate construction for numbered works 6 and 7	Part of numbered work 6 and 7
Land forming part of agricultural land, part of public footpath 14, overhead electricity transmission lines and pylon situated to the east of Station Lane, Millbrook	13_EC	Temporary use (including the installation and use of a cable winch, the oversailing for the temporary diversion of the existing 400kV transmission line and the passing and re-passing of users of public footpaths) to facilitate construction for numbered works 6 and 7	Part of numbered work 6 and 7
Land forming part of agricultural land, CLH pipeline system, overhead electricity transmission lines and pylon situated to the north east of Station Lane, Millbrook	14_EC	Temporary use (including the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line) to facilitate construction for numbered works 6 and 7	Part of numbered works 6 and 7
Land forming part of disused pit (Rookery Pit), tracks, woodland and part of public footpath 15 situated to the west of Midland Main Line Railway north of public footpath 15, Millbrook	1A_GC	Temporary use (including the passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A	Part of numbered work 4A

<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>
Land forming part of disused pit (Rookery Pit), tracks, woodland and part of public footpath 15 situated to the west of Midland Main Line Railway north of public footpath 15, Millbrook	1B_GC	Temporary use (including the passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A	Part of numbered work 4A
Land forming part of agricultural land, overhead electricity transmission lines and CLH pipeline system situated to the north east of Lower Farm, Millbrook	7A_GC	Temporary use (including installation and use of welfare facilities, use as a construction compound and passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A	Part of numbered work 4A
Land forming part of agricultural land, overhead electricity transmission lines and CLH pipeline system situated to the north east of Lower Farm, Millbrook	7B_GC	Temporary use (including installation and use of welfare facilities, use as a construction compound and passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A	Part of numbered work 4A
Land forming part of agricultural land and part of public footpath 7 situated to the north east of Lower Farm, Millbrook	9A_GC	Temporary use (including the installation and use of welfare facilities and passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A	Part of numbered work 4A

<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>
Land forming part of agricultural land and part of public footpath 7 situated to the north east of Lower Farm, Millbrook	9B_GC	Temporary use (including the installation and use of welfare facilities and passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A	Part of numbered work 4A
Land forming part of access track situated to the east of Lower Farm, Millbrook	9C_GC	Temporary use to facilitate construction for numbered works 3 and 4	Part of numbered works 3 and 4
Land forming part of agricultural land situated to the south east of Lower Farm, Millbrook	12A_GC	Temporary use (including the installation and use of site office and welfare facilities) to facilitate construction for numbered works 3 and 4	Part of numbered works 3 and 4
Land forming part of agricultural land situated to the south east of Lower Farm, Millbrook	12B_GC	Temporary use (including the installation and use of site office and welfare facilities) to facilitate construction for numbered works 3 and 4	Part of numbered works 3 and 4

## PROTECTIVE PROVISIONS

## PART 1

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

1. For the protection of the utility undertakers referred to in this part of this Schedule (save for National Grid Electricity and National Grid Gas which are protected by Part 3 of this Schedule, EPN which is protected by Part 4 of this Schedule, Anglian Water which is protected by Part 5 of this Schedule and Covanta which is protected by Part 7 of this Schedule), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. 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 (agreements to adopt water main or service pipe at future date) 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) (adoption of sewers and disposal works) of that Act(c) 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 (general interpretation) 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

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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) and amended by sections 10(2)(a), 10(2)(b) and 10(2)(c) of the Water Act 2014 (c.21).

(c) 1991 c.56. Section 102(4) was amended by sections 96(1)(a), 96(1)(b), 96(1)(c), 96(1)(d) and 96(1)(e) of the Water Act 2003 c.37 and paragraph 90 of Schedule 7 to the Water Act 2014 c.21.

“utility undertaker” means—

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

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

3. 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 (street works in England and Wales) of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (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.

5. 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.

6.—(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 41 (arbitration).

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(a) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27), Section 48 was amended by paragraph 2(1) of Schedule 6 to the Utilities Act 2000(c.27).

(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 41 (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.

7.—(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 41 (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.

8.—(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 (3), 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 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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.

**9.**—(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 6(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 41 (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 6(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.

**10.**—(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 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of 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.

**11.** 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 2

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

**12.—**(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);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 (electronic communications apparatus, lines and structures) of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 (electronic communications code) and Schedule 3A (the electronic communications code) of the 2003 Act(b);

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 (infrastructure system) of that code;

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) (application of the electronic communications code) of the 2003 Act; and

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

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

**13.** The exercise of the powers of article 29 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of Schedule 3A of the 2003 Act.

**14.—**(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,

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(a) 2003 c.21.as amended by the Digital Economy Act 2017 (c.30)

(b) added by Schedule 1 of the Digital Economy Act 2017 (c.30)

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.

(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 41 (arbitration).

**15.** 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 (street works in England and Wales) 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.

**16.** 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 3

### FOR THE PROTECTION OF NATIONAL GRID

#### **Application**

**17.** 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**

**18.** 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;

“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;

“functions” includes powers and duties;

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(a) 1989 c.29.

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the promoter to submit for the undertaker’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“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;

“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;

“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.

19. Except for paragraphs (20) (apparatus in streets subject to temporary prohibition or restriction), (24) (retained apparatus: protection of National Grid as Gas Undertaker), (25) (retained apparatus: protection of National Grid as Electricity Undertaker), (26) (expenses) and (27) (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**

20.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 12 (stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary prohibition or restriction under the powers of article 11 (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**

21.—(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.

(3) Any agreement or consent granted by National Grid under paragraph 24 (retained apparatus: protection of National Grid as Gas Undertaker) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 21(1).

### **Removal of apparatus**

**22.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 21 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 23(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**

**23.—**(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 under paragraph 31 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 (2), article 41 (arbitration) of the Order shall apply.

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

**24.—**(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 22(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 (1) and (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-paragraphs (1) or (2) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub paragraph (4), 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), (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) to which sub-paragraph (1) applies 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 (17) to (19) and (22) to (23) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(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 comprising the authorised development, 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-paragraph (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".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 26.

(13) The plans submitted to National Grid by the undertaker pursuant to paragraph 24(1) and/or paragraph 25(1) must be sent to Spencer Jeffries at [spencer.jeffries@nationalgrid.com](mailto:spencer.jeffries@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

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

**25.—**(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 22(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;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(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-paragraphs (1), (2) or (3) apply 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 sub-paragraph (6) or (8);
- (b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraphs (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-paragraphs (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraphs (2), (3) or (6), 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 National Grid’s satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days’ notice of such works from the date of submission of a plan in line with sub-paragraphs (1), (2), (3) or (6) (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 (17) to (19) and (22) to (23) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(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, the undertaker must 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".

(13) This paragraph shall not apply to numbered work 7.

## **Expenses**

**26.**—(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 National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative 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 22(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 41 (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**

27.—(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 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 (unless sub-paragraph (3) applies) 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 (benefit of order granting development consent) 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-section 3(b) shall be subject to the full terms of this Schedule including this paragraph (27) 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, unless payment is required in connection with a statutory compensation scheme 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 (27) 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 (27) for claims reasonably incurred by National Grid.

### **Enactments and agreements**

28. 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**

29. 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 22(2) and paragraphs (24) or (28)) 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**

30. If in consequence of the agreement reached in accordance with paragraph 21(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**

31. Save for differences or disputes arising under paragraphs 22(2), 22(4), 23(1), 24 and 25 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 41 (arbitration) of the Order.

## **PART 4**

### **FOR THE PROTECTION OF EPN**

32. For the protection of EPN as referred to in this part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and EPN.

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

“alternative apparatus” means alternative apparatus adequate to enable EPN 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 EPN;

“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

“EPN” means Eastern Power Networks plc (Company No. 02366906) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP;

**34.** This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and EPN 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 11 (temporary prohibition or restriction of use of streets), EPN 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 EPN’s apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of EPN 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 EPN 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 EPN 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 EPN reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to EPN 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, EPN 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 EPN 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 EPN and the undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(5) EPN must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41 (arbitration), and after the grant to EPN of any

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(a) 1989 c.29.

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 EPN 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 EPN, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of EPN.

(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 EPN 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 EPN or in default of agreement settled by arbitration in accordance with article 41 (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 EPN 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 EPN 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 EPN 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 EPN for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and EPN is entitled to watch and inspect the execution of those works.

(3) Any requirements made by EPN 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 EPN 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 EPN 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 EPN the reasonable expenses incurred by EPN 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 41 (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 EPN 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 EPN 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 EPN 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 EPN, or there is any interruption in any service provided, or in the supply of any goods, by EPN, the undertaker must—

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

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 EPN, its officers, servants, contractors or agents.

(3) EPN 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 EPN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 5

### FOR THE PROTECTION OF ANGLIAN WATER

43. For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

44. In this Part of this schedule—

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

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991; and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of the Water Industry Act 1991 or an agreement to adopt made under section 104 (agreements to adopt a sewer, drain or sewage disposal works, at future date) of that Act<sup>(a)</sup>,

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

“plan” includes sections, drawings, specifications and method statements.

45. This Part of this Schedule does not apply to apparatus to the extent that the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 (water supply) of the 1991 Act.

46.—(1) The undertaker must not interfere with, build over or near to any apparatus within the Order land or 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 the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus: 2.25 metres where the diameter of the pipe is less than 150 millimetres; 3 metres where the diameter of the pipe is between 150 and 450 millimetres; 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and 6 metres where the diameter of the pipe exceeds 750 millimetres, unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out the authorised development on behalf of the undertaker.

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(a) 1991 c.56. Section 102(4) was amended by paragraph 90 of Schedule 7 to the Water Act 2014 (c.21) and section 96(1)(c) of the Water Act 2003 (c.37); Section 104 was amended by section 96(4)(a), (b), (c), (e) and (f), and paragraph 1 of Schedule 9(3) to the Water Act 2003 (c.37), section 42(3) of the Flood and Water Management Act 2010 and by sections 11(2)(a), 11(2)(b) and 11(2)(c) of the Water Act 2014 (c.21).

**47.** The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010 (a) or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

**48.** In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which Apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Anglian Water has established to its reasonable satisfaction in a timely manner, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus or provide alternative apparatus.

**49.** Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 41 (arbitration).

**50.** If the undertaker is unable to create the new rights referred to in paragraph (49), Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible, use its reasonable endeavours to obtain the necessary rights.

**51.** If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

**52.** In consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection of other Anglian Water assets.

**53.** If for any reason or in consequence of the construction of any of the works referred to in paragraphs 46, 47 and 48 and 52 above 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 Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker shall—

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

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

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(a) S.I. 2010/675



**54.**—(1) Nothing in paragraph 53 imposes any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of Anglian Water, its officers’ servants, contractors or agents.

(2) Anglian Water must give the undertaker reasonable notice of any claim or demand pursuant to paragraph 53 and must consider its representations before proceeding further in respect of the claim or demand.

(3) Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any claim, costs, expenses, loss, demands and penalties pursuant to paragraph 53. If requested to do so by the undertaker, Anglian Water shall provide an explanation of how the claim has been minimised

**55.** Any difference or dispute arising between the undertaker and Anglian Water under this schedule must, unless otherwise agreed in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with article 41 (arbitration).

## PART 6

### FOR THE PROTECTION OF COVANTA ROOKERY SOUTH LIMITED

**56.** For the protection of Covanta Rookery South Limited (Company No. 07094843) as referred to in this part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Covanta.

**57.** In this part of this Schedule—

“Covanta” means Covanta Rookery South Limited (Company No. 07094843) whose registered office is at 20-22 Bedford Row London WC1R 4JS;

“the Millbrook authorised development” means the development authorised by this Order;

“the respective authorised developments” means the Rookery authorised development and the Millbrook authorised development”

“the Rookery Order” means the Rookery South (Resource Recovery Facility) Order 2011;

“Rookery limits of deviation” means the areas of the Rookery Order land in respect of which the Rookery authorised development may be constructed, in accordance with Article 3(2) of the Rookery Order;

“the Rookery Order land” means the land or any part of it shown as falling within the Rookery Order limits; and

“the Rookery authorised development” means the development authorised by the Rookery Order.

#### **Co-operation during construction**

**58.** The undertaker shall not submit written details for numbered work 2A for approval to the relevant planning authorities in accordance with requirement 5(2) (highway access) without first obtaining the written consent of Covanta in respect of the route, siting and location of numbered work 2A.

**59.** The undertaker shall not exercise powers pursuant to articles 9 (street works), 10 (construction and maintenance of new or altered means of access) or 11 (temporary prohibition or restriction of use of streets) over land within the Rookery limits of deviation without first obtaining the written consent of Covanta.

**60.**—(1) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Covanta, that approval or consent shall be in writing (and subject to such reasonable terms and conditions as Covanta may require), but shall not be unreasonably withheld.

(2) In the event that Covanta does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, Covanta is deemed to have given its consent (without any terms or conditions).

**61.** Insofar as the construction of the Millbrook authorised development is or may be undertaken concurrently with the Rookery authorised development, the undertaker shall—

- (a) co-operate with Covanta with a view to ensuring—
  - (i) the co-ordination of construction programming and the carrying out of works; and
  - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Covanta and their respective contractors.
- (b) use reasonable endeavours to avoid any conflict arising between the carrying out of the respective authorised developments.

**62.** Insofar as the construction of the Millbrook authorised development gives rise to the need to modify any scheme secured by a requirement contained in Part 2 of Schedule 1 to the Rookery Order, the undertaker shall provide such assistance as is reasonably necessary to support Covanta in pursuing any such modification.

### **Arbitration**

**63.—**(1) Any difference or dispute arising between the undertaker and Covanta under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Covanta, be referred to and settled in arbitration in accordance with the Rules at Schedule 13 of this Order, by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Article 41 (arbitration) shall not apply to any difference or dispute under any provisions of the Part of this Schedule.

## **PART 7**

### **FOR THE PROTECTION OF NETWORK RAIL**

**64.** For the protection of Network Rail as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and Network Rail, have effect.

**65.** In this part of this Schedule—

“Network Rail” means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN and any associated company of Network Rail which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

**66.—**(1) Where under this Part Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) Subject to subparagraph (1) where Network Rail is asked to give its consent, agreement or approval pursuant to this Part, such consent, agreement or approval must not be unreasonably withheld but may be given subject to reasonable conditions.

**67.** The undertaker shall include provisions relating to anti-dazzle fencing in the written details of any proposed permanent fence or other means of enclosure for numbered work 2A submitted pursuant to requirement 6 of Schedule 2 such provisions to be substantially in accordance with the equivalent provisions in the approved details submitted pursuant to paragraph 11 of Schedule 2 of The Rookery South (Resource Recovery Facility) Order 2011 unless otherwise agreed by Network Rail.

**68.—(1)** The undertaker shall not submit the written details of any proposed permanent fence or other means of enclosure for numbered work 2A to Central Bedfordshire Council in accordance with requirement 6 of Schedule 2 (Fencing and other means of site perimeter enclosure) without having first obtained the written approval of Network Rail in accordance with subparagraph (2).

(2) The undertaker shall provide Network Rail with a draft of the written details of any proposed permanent fence or other means of enclosure for numbered work 2A (including the proposed anti-dazzle fencing) for approval and Network Rail shall within a period of 28 days beginning with the date on which the written details are received by Network Rail serve written notice on the undertaker confirming that:

- (a) the written details are approved; or
- (b) the written details are approved subject to reasonable amendments as required by Network Rail; or
- (c) the written details are not approved and the reason for the non-approval; or
- (d) that further information is required in order for Network Rail to make its determination (in which case this paragraph 68(2) shall apply to such further information from the date of its receipt by Network Rail).

(3) In the event that Network Rail fails to serve written notice in accordance with paragraph 68(2) within 28 days of receipt Network Rail shall be deemed to have served a notice pursuant to paragraph 68(2)(a).

(4) The undertaker must include any amendments which are required by Network Rail and notified to the undertaker by Network Rail in the notice given pursuant to paragraph 68(2)(b) in the written details of any proposed permanent fence or other means of enclosure for numbered work 2A it submits to Central Bedfordshire Council in accordance with requirement 6 of Schedule 2 (Fencing and other means of site perimeter enclosure) and the undertaker shall not submit any such written details to Central Bedfordshire Council which have not been approved by Network Rail in accordance with paragraphs 68(2) or (3).

(5) In deciding whether to approve the written details or request any amendments Network Rail shall take into account any fencing approved or constructed pursuant to The Rookery South (Resource Recovery Facility) Order 2011.

(6) Each notice and all other information required to be sent to Network Rail under the terms of this paragraph 68 shall:

- (a) be sent to the Company Secretary and General Counsel at Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN via Royal Mail plc's special delivery service (or if this service is no longer being provided an appropriate recorded delivery postal service) and marked for the attention of the London North Western Route Asset Manager; and
- (b) contain a clear statement on its front page that Network Rail must respond within 28 days of receipt.

**69.** The undertaker shall not be obliged to construct the anti-dazzle fencing approved pursuant to requirement 6 of Schedule 2 in the event that anti-dazzle fencing has been constructed pursuant to The Rookery South (Resource Recovery Facility) Order 2011.

**70.—(1)** The undertaker shall not submit the construction traffic management plan to the relevant planning authorities in accordance with requirement 11 of Schedule 2 (construction traffic management plan) without having first obtained the written approval of Network Rail in accordance with subparagraph (2).

(2) The undertaker shall provide Network Rail with a draft of the construction traffic management plan for approval and Network Rail shall within a period of 28 days beginning with the date on which the draft construction traffic management plan is received by Network Rail serve written notice on the undertaker confirming that:

- (a) the draft construction traffic management plan is approved; or
- (b) the draft construction traffic management plan is approved subject to reasonable amendments as required by Network Rail; or
- (c) the draft construction traffic management plan is not approved and the reason for the non-approval; or
- (d) that further information is required in order for Network Rail to make its determination (in which case this paragraph 70(2) shall apply to such further information from the date of its receipt by Network Rail).

(3) In the event that Network Rail fails to serve written notice in accordance with paragraph 70(2) within 28 days of receipt Network Rail shall be deemed to have served a notice pursuant to paragraph 70(2)(a).

(4) The undertaker must include any amendments which are required by Network Rail and notified to the undertaker by Network Rail in the notice given pursuant to paragraph 70(2)(b) in the draft construction traffic management plan it submits to the relevant planning authorities in accordance with requirement 11 of Schedule 2 (construction traffic management plan) and the undertaker shall not submit any such written details to the relevant planning authorities which have not been approved by Network Rail in accordance with paragraphs 70(2) or (3).

(5) In deciding whether to approve the draft construction traffic management plan or request any amendments Network Rail shall take into account any funding received from any other third party in respect of upgrade works to the Green Lane level crossing (even if such upgrade works have not yet been completed by Network Rail) and any approval must not be conditional on the undertaker contributing funding towards a full barrier at Green Lane level crossing.

(6) Each notice and all other information required to be sent to Network Rail under the terms of this paragraph 70 shall:

- (a) be sent to the Company Secretary and General Counsel at Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN via Royal Mail plc's special delivery service (or if this service is no longer being provided an appropriate recorded delivery postal service) and marked for the attention of the London North Western Route Level Crossing Manager; and
- (b) contain a clear statement on its front page that Network Rail must respond within 28 days of receipt.

**71.—(1)** Any difference or dispute arising between the undertaker and Network Rail under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Network Rail, be referred to and settled in arbitration in accordance with the Rules at Schedule 13 of this Order, by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Article 41 (arbitration) shall not apply to any difference or dispute under any provisions of the Part of this Schedule.

**72.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

## MODIFICATIONS TO AND AMENDMENTS OF THE ROOKERY SOUTH (RESOURCE RECOVERY FACILITY) ORDER 2011

### **Article 33 to the Rookery South (Resource Recovery Facility) Order 2011**

1. In the title to Article 33, after the words “Protection of Network Rail Infrastructure Limited” insert the words “and Millbrook Power Limited”.

2. After the words “Schedule 7” and before the words “Protection of Network Rail Infrastructure Limited” insert the words “Part 1”.

### **Schedule 7 to the Rookery South (Resource Recovery Facility) Order 2011**

3. After paragraph 21 of Schedule 7 insert new Part 2—

#### “Part 2

#### PROTECTION OF MILLBROOK POWER LIMITED

##### **Application**

22. The following provisions of this Part of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Millbrook Power.

##### **Interpretation**

23. In this part of this Schedule—

“the Millbrook access road land” means the land shown as plots 4\_PGP, 5\_PGP, 5A\_PGP, 6\_PGP and 7\_PGP on the land plans and described in the book of reference as certified by the Secretary of State pursuant to the Millbrook Order;

“the Millbrook Order” means the Millbrook Gas Fired Generating Station Order 2019;

“the Millbrook Order land” has the same meaning as the term “Order land” in Article 2(1) of the Millbrook Order but excluding the Millbrook access road land;

“Millbrook Power” means Millbrook Power Limited, (Company No. 08920458) whose registered office is at Drax Power Station, Drax, Selby, North Yorkshire YO58 8PH or any person having the benefit of the Millbrook Order pursuant to Article 6 and/or 7 thereof;

“the Order” means this Order; and

“the respective authorised developments” means the developments authorised by the Order and the Millbrook Order respectively.

##### **Regulation of powers over the Millbrook access road land**

24. (1) If as a consequence of the powers granted under this Order access (with or without vehicles plant and machinery) to the Millbrook Order land is obstructed the undertaker shall provide such alternative means of access to the Millbrook Order land as will enable Millbrook Power to construct, use and maintain the development authorised by the Millbrook Order no less effectively than was possible before such obstruction.

(2) Subject to Millbrook Power complying with paragraph 58 of Part 6 of Schedule 10 to the Millbrook Order the undertaker shall not exercise the powers granted under this Order

so as to hinder or prevent the construction, use or maintenance of numbered work 2 as authorised by the Millbrook Order without the prior written consent of Millbrook Power.

(3) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Millbrook Power, that approval or consent shall be in writing (and subject to such reasonable terms and conditions as Millbrook Power may require), but shall not be unreasonably withheld.

(4) In the event that Millbrook Power does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, Millbrook Power is deemed to have given its consent (without any terms or conditions).

### **Regulation of powers over the Millbrook Order land**

**25.**—(1) The undertaker shall not exercise the powers under any of the articles of the Order specified in sub-paragraph (2) over or in respect of the Millbrook Order land otherwise than with the prior written consent of Millbrook Power.

(2) The articles referred to in sub-paragraph (1) are—

- (a) Article 10 (street works);
- (b) Article 11 (public rights of way);
- (c) Article 12 (temporary stopping up of streets);
- (d) Article 13 (access to works);
- (e) Article 15 (discharge of water);
- (f) Article 16 (authority to survey and investigate land);
- (g) Article 17 (compulsory acquisition of land);
- (h) Article 18 (power to override easements and other rights);
- (i) Article 26 (temporary use of land for maintaining authorised development);
- (n) Article 27 (statutory undertakers); and
- (o) Article 31 (felling or lopping of trees).

(3) In the event that Millbrook Power withholds its consent pursuant to sub-paragraph (1) it shall notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

### **Co-operation**

**26.** Insofar as the construction of the respective authorised developments is or may be undertaken concurrently, the undertaker shall—

- (a) co-operate with Millbrook Power with a view to ensuring—
  - (i) the co-ordination of construction programming and the carrying out of works; and
  - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Millbrook Power and their respective contractors.
- (b) use reasonable endeavours to avoid any conflict arising between the carrying out of the respective authorised developments.

**27.** Insofar as the construction of the authorised development gives rise to the need to modify any scheme secured by a requirement contained in Schedule 2 to the Millbrook Order, the undertaker shall provide such assistance as is reasonably necessary to support Millbrook Power in pursuing any such modification.

## **Requirements**

**28.** Insofar as compliance with paragraph 25(1) of this Part prevents the undertaker from complying with any requirement contained in Part 2 of Schedule 1 to the Order, the undertaker shall not be in breach of such requirement for the time period specified in paragraph 25(3).

**29.** In the event that paragraph 28 applies, the undertaker shall provide the relevant planning authority with a copy of the reasons given by Millbrook Power for refusing consent and the time period pursuant to paragraph 25(3).

**30.** It shall be a defence for any person charged with an offence pursuant to section 161 of the Planning Act 2008 (breach of terms of order granting development consent) to prove that they were not able to comply with a requirement contained in Part 2 of Schedule 1 to the Order due to the effect of paragraph 25 of this Part.

## **Arbitration**

**31.** —(1) Any difference or dispute arising between the undertaker and Millbrook Power under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Millbrook Power, be referred to and settled in arbitration, by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(3) Article 34 (arbitration) shall not apply to any difference or dispute under any provision of this Part of this Schedule.”

## PROCEDURE FOR DISCHARGE OF REQUIREMENTS

**Applications made under requirements**

1.—(1) Where an application has been made to the relevant 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 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 authority in writing.

(2) Subject to sub-paragraph (3), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant 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 authorities for any consent, agreement or approval required by a requirement included in this Order; and
- (b) the relevant planning authorities do 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 authorities 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 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 the relevant authority must, within twenty eight (28) 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 authorities do not give such notification within this twenty eight (28) 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 2 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 paragraph 2.

**Appeals**

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



- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 1(3)) an application for any consent, agreement or approval required by an article or 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 authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant 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 authority and any article or requirement consultee (together with the undertaker, these are the “appeal parties”);
- (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 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 sub-paragraph (c) above; and
- (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty (30) business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

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

(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) 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 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) days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c)-(e).

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

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the relevant 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 take into account written representations that have been sent outside of the relevant time limits but the appointed person must proceed to a decision within the time limits set by this Schedule.

(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 2 of this Order as if it had been given by the relevant authority. The relevant 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 authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the relevant 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.

4. In this Schedule "relevant authority" means the relevant planning authorities, relevant highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain as may be appropriate to the consent, agreement or approval sought.

## SCHEDULE 13

### ARBITRATION RULES

#### **Primary Objective**

1. The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the Arbitrator is appointed pursuant to paragraph 63 of Schedule 10 of the Order.

2. The Arbitration shall be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

#### **Time Periods**

3. All time periods in these Arbitration Rules will be measured in days and this will include weekends, but not bank or public holidays.

4. Time periods will be calculated from the day after the Arbitrator is appointed which shall be either:

(1) the date the Arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or

(2) the date the Arbitrator is appointed by the Secretary of State.

#### **Timetable**

5. The timetable for the Arbitration will be that set out in Rules 6 to 8 below unless amended in accordance with Rule 22.

6. Within 14 days of the Arbitrator being appointed, the Claimant shall provide both the Respondent and the Arbitrator with:

(1) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant’s contentions as to those issues, the amount of its claim and/or the remedy it is seeking;

(2) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

7. Within 14 days of receipt of the Claimant’s Rule 6 statements by the Arbitrator and Respondent, the Respondent shall provide the Claimant and the Arbitrator with:

(1) a written Statement of Defence responding to the Claimant’s Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant’s claim, its acceptance of any element(s) of the Claimant’s claim, its contentions as to those elements of the Claimant’s claim it does not accept;

(2) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;

(3) any objections it wishes to make to the Claimant’s statements, comments on the Claimant’s expert report(s) (if submitted by the Claimant) and explanations for the objections.

8. Within 7 days of the Respondent serving its Rule 7 statements, the Claimant may make a Statement of Reply by providing both the Respondent and the Arbitrator with:

(1) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

(2) all statements of evidence and copies of documents in response to the Respondent's submissions;

(3) any expert report in response to the Respondent's submissions;

(4) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent;

(5) its written submissions in response to the legal and factual issues involved.

## **Procedure**

**9.** The parties' pleadings, witness statements and expert reports (if any) shall be concise. No single pleading will exceed 30 single-sided A4 pages using 10pt Arial font.

**10.** The Arbitrator shall make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the Arbitrator decides that a hearing is necessary to explain or resolve any matters.

**11.** Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

**12.** Within 7 days of receiving the last submission, the Arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

**13.** Within 10 days of the Arbitrator advising the parties that he will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the Arbitrator shall direct a date and venue which he considers is fair and reasonable in all the circumstances. The date for the hearing shall not be less than 35 days from the date of the Arbitrator's direction confirming the date and venue of the hearing.

**14.** A decision will be made by the Arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the Arbitrator, then any expert(s) attending the hearing may be asked questions by the Arbitrator.

**15.** There will be no process of examination and cross-examination of experts, but the Arbitrator shall invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the Arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that:

(1) At least 28 days before a hearing, the Arbitrator will provide a list of issues to be addressed by the expert(s);

(2) If more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and

(3) The form and content of a joint report shall be as directed by the Arbitrator and must be provided at least 7 days before the hearing.

**16.** Within 14 days of a Hearing or a decision by the Arbitrator that no hearing is to be held the Parties may by way of exchange provide the Arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The Arbitrator shall take these submissions into account in the Award.

**17.** The Arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which he/she is appointed, unless both parties otherwise agree to an extension to the date for the award.

**18.** If a party fails to comply with the timetable, procedure or any other direction then the Arbitrator may continue in the absence of a party or submission or document, and may make a

decision on the information before him/her attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

19. The Arbitrator's award shall include reasons. The parties shall accept that the extent to which reasons are given shall be proportionate to the issues in dispute and the time available to the Arbitrator to deliver the award.

### **Arbitrator's Powers**

20. The Arbitrator has all the powers of the Arbitration Act 1996, including the non-mandatory sections, save where modified by these Rules.

21. There shall be no discovery or disclosure, except that the Arbitrator shall have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the Arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

22. Any time limits fixed in accordance with this procedure or by the Arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the Arbitrator. In the absence of agreement, the Arbitrator may vary the timescales and/or procedure:

(1) if the Arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;

(2) only for such a period that is necessary to achieve fairness between the parties.

23. On the date the award is made, the Arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the Arbitrator's fees and expenses.

### **Costs**

24. The costs of the Arbitration shall include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.

25. Where the difference involves connected/interrelated issues, the Arbitrator will consider the relevant costs collectively.

26. The final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.

27. The Arbitrator will award recoverable costs on the general principle that costs follow the event, having regard to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

### **Confidentiality**

28. The parties agree that any hearings in this Arbitration shall take place in private.

29. The parties and Arbitrator agree that any matters, materials, documents, awards, expert reports and the like are confidential and shall not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts.

**SCHEDULE 14**  
**DOCUMENTS AND PLANS TO BE CERTIFIED**

**Table 11**

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>
access road visibility splay plan (contained in appendix 2.1 of appendix 12.1 of the environmental statement)	Drawing reference 31116/2001/008	B	April 2018
book of reference	4.3	3	August 2018
design principles statement	10.2	0	October 2017
environmental statement, Main statement	6.1	0	October 2017
Appendix Volume A: 1.1 Glossary	6.2	0	October 2017
Appendix Volume B: 1.2 Scoping Report and Scoping Opinion	6.2	0	October 2017
Appendix Volume C: 2.6-2.14 Legislation and Policy	6.2	0	October 2017
Appendix Volume D: 3.1 Mitigation Roadmap	6.2	0	October 2017
Appendix Volume E: 3.2 Outline CEMP	6.2	2	July 2018
Appendix Volume F: 5.1 CHP Statement	6.2	0	October 2017
Appendix Volume G: 6.1-6.3 Air Quality	6.2	0	October 2017
Appendix Volume H: 7.1 Noise	6.2	0	October 2017
Appendix Volume H: 7.2 and 7.3 Noise	6.2	1	April 2018
Appendix Volume I: 8.1-8.5 Ecology	6.2	0	October 2017
Appendix Volume J: 10.1 Ground Conditions	6.2	0	October 2017
Appendix Volume K: 11.1 and 11.2 LVIA	6.2	0	October 2017
Appendix Volume K: 11.3 LVIA	6.2	1	April 2018
Appendix Volume L: 12.1 TA (save in respect of Appendix	6.2	0	October 2017

2.1)			
Appendix Volume L: Appendix 2.1 of the TA	6.2 Drawing reference 31116/2001/0008	B	April 2018
Appendix Volume M: 13.1-13.3 Historic Environment	6.2	0	October 2017
Appendix Volume N: 15.1 Electric and Magnetic Fields Assessment Report	6.2	0	October 2017
Figures (save in respect of Figure 11.1)	6.3	0	October 2017
Figure 11.1	6.3	1	April 2018
Non-technical summary	6.4	0	October 2017
the indicative site layout plans	2.3	1	July 2018
land plans	2.5	1	July 2018
the low level restoration scheme baseline works plan	Drawing reference: J0008128-409	0	April 2018
the outline construction environment management plan (contained in appendix 3.2 of the environmental statement)	6.2	2	July 2018
the outline construction traffic management measures (contained in the outline construction environment management plan and appendices 5.2 to 5.5 of appendix 12.1 of the environmental statement)	6.2	0	October 2017
the outline landscape and ecological mitigation and management strategy (contained in appendix 11.2 of the environmental statement)	6.2	1	April 2018
the outline lighting strategy (contained in appendix 11.3 of the environmental statement)	6.2	0	October 2017
the outline travel plan	6.2	0	October 2017

(contained in appendix 12.1 of the environmental statement)			
the rights of way, streets and access plan	2.7	2	August 2018
works plans	2.6	1	July 2018



## **EXPLANATORY NOTE**

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

This Order authorises Millbrook 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 38 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire SG17 5TQ.