

# Riverside Energy Park

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## Draft Riverside Energy Park Development Consent Order Explanatory Memorandum

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# RIVERSIDE ENERGY PARK ORDER 202\*

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## EXPLANATORY MEMORANDUM

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### 1. INTRODUCTION

- 1.1 This explanatory memorandum has been prepared to explain the purpose and effect of the provisions of the draft Riverside Energy Park Order 202\* (“**the Order**”) (3.1, Rev 2, submitted at Deadline 3), in accordance with regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. This document should be read alongside the Order and the other documents submitted in respect of this application for the Order.
- 1.2 This memorandum also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (“**the model provisions**”). Whilst the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have been removed by the Localism Act 2011, the Planning Inspectorate in its pre-submission advice recommend that a ‘track change’ version of the draft development consent order, showing the departures from the model provisions, be provided. This explanatory memorandum therefore also notes variations from the model provisions. The ‘track change’ version of the Order compared to the model provisions can be found at Appendix 1 to this document.

### 2. THE PURPOSE OF THE ORDER

- 2.1 Cory Environmental Holdings Limited (“**Cory**”) has made an application pursuant to the Planning Act 2008 (“**the 2008 Act**”) to the Secretary of State for a development consent order for the construction, operation and maintenance of the Riverside Energy Park (referred to in the Order as “**the authorised development**”). Cory is the “undertaker” for the purposes of the Order.
- 2.2 The Riverside Energy Park (“**REP**”) will be an integrated Energy Park comprising complementary energy generating development (with energy from waste being the largest component) and an associated electrical connection. The authorised development comprises:
- 2.2.1 REP, to be located on land immediately adjacent to the Cory Group’s (as defined in section 1.2 of the Funding Statement (4.2, APP-017) existing Riverside Resource Recovery Facility (“**RRRF**”) situated at Norman Road in Belvedere, in the London Borough of Bexley;
- 2.2.2 electrical connection, running underground between REP and the point of connection at Littlebrook substation, in the Borough of Dartford;
- 2.2.3 a main temporary construction compound; and

2.2.4 other electrical cable route temporary construction compounds.

2.3 The primary components of REP, with a nominal rated electrical output of up to 96 megawatts (MW<sub>e</sub>) comprise:

2.3.1 Energy Recovery Facility (“ERF”);

2.3.2 Anaerobic Digestion facility;

2.3.3 Solar Photovoltaic Installation;

2.3.4 Battery Storage; and

2.3.5 Infrastructure to provide an opportunity for local district heating for nearby residents and businesses.

2.4 The Cory Group is a leading recycling, energy recovery and resource management company, with an extensive river logistics business based in London. As part of its waste management activities, the Cory Group operates RRRF situated adjacent to the proposed REP on Norman Road, Belvedere. RRRF is a key element of London’s energy and resource management infrastructure and has been operating highly successfully since 2011.

2.5 REP will optimise the use of the Cory Group’s existing energy and river infrastructure in London, including its operational jetty, tugs and barges. REP will help meet London’s pressing need for further waste management, resource recovery and energy generation infrastructure.

2.6 The below table sets out the key policy themes for REP:

**Key REP Policy Themes**

Key policy themes at the core of REP and the DCO submission are:

Riverside Energy Park: Key REP Policy Themes	
✓	Generating reliable low carbon/renewable energy for London and UK
✓	Bridging the infrastructure gap in London and the South East
✓	Replacing landfill - <u>not</u> recycling – and moving waste up the Waste Hierarchy
✓	Dealing with London’s residual waste problem - in London – and achieving greater net self-sufficiency for London
✓	Maximising movement of freight by river in London and minimising traffic congestion
✓	Tackling air quality and delivering carbon positive outcomes
✓	Bringing forward private investment – and avoiding the need for public subsidy

2.7 As the authorised development comprises an onshore electricity generating station in England with a capacity of more than 50MW, it constitutes a nationally significant infrastructure project (“NSIP”) under section 15(2) of the 2008 Act. Accordingly, it

requires development consent under section 31 of the 2008 Act. Development consent may only be granted by order following an application to the Secretary of State under section 37 of the 2008 Act.

2.8 The development to be authorised by the Order can be summarised as follows:

In the London Borough of Bexley:

- 2.9 **Work Number 1A** - ERF: to provide thermal treatment of Commercial and Industrial residual (non-recyclable) waste with the potential for treatment of (non-recyclable) Municipal Solid Waste;
- 2.10 **Work Number 1B** - Anaerobic Digestion facility: to process food and green waste. Outputs from the Anaerobic Digestion facility would be transferred off-site for use in the agricultural sector as fertilizer or as an alternative, where appropriate, used as a fuel in the ERF to generate electricity;
- 2.11 **Work Number 1C** - Solar Photovoltaic Installation: to be integrated across a wide extent of the Main REP Building roof;
- 2.12 **Work Number 1D** - Battery Storage: to supply additional power to the local distribution network at times of peak electrical demand. This facility would be integrated into the Main REP building;
- 2.13 **Work Number 1E** - Main REP building enclosing and/or supporting all or part of Work Numbers 1A, 1B, 1C and 1D.
- 2.14 **Work Number 2** - A cooling system comprising an air-cooled condenser. The area where this Work Number is located may also be where the steam turbine and electrical generator and steam turbine building is located if not constructed and installed as part of Work Number 1A;
- 2.15 **Work Number 3** - Combined Heat and Power Connection (“**CHP**”): REP would be CHP Enabled with necessary infrastructure included within the REP site. The capability to provide a district heating connection could be used to serve nearby residential developments;
- 2.16 **Work Number 4** - Electrical substation;
- 2.17 **Work Numbers 5 & 6** - Supporting buildings, facilities and infrastructure;
- 2.18 **Work Number 7** - Installation of pipes and cables from Work Number 6;
- 2.19 **Work Number 8** - temporary construction compound;

In the London Borough of Bexley and the Borough of Dartford:

2.20 **Work Number 9** – Works to construct and install an electrical connection;

In the Borough of Dartford:

2.21 **Work Number 10** - Works to connect Work Number 9 to the Littlebrook substation.

- 2.22 A further more detailed, description of the various elements of the authorised development is provided in Chapter 3 of the environmental statement (6.1, REP2-013).

*The NSIP and Associated development*

- 2.23 Pursuant to section 115 of the 2008 Act, development consent can be granted for the NSIP and associated development. Associated development is development associated with the NSIP as set out in section 115 of the 2008 Act, and having regard to guidance on associated development issued by the Secretary of State for Communities and Local Government (the “**Guidance**”). The Guidance illustrates the types of development that may qualify as associated development and sets out the defining characteristics of associated development. Associated development must not be an aim in itself. In most cases it is a type normally brought forward with the primary development, and may include measures necessary to mitigate the effects of the primary development or innovative development ideas otherwise fulfilling the principles of the Guidance. It should be proportionate to the nature and scale of the primary development.

- 2.24 Work Numbers 1 and 2 as described in Schedule 1 to the Order comprise the NSIP. Works Numbers 3 to 10 of Schedule 1 to the Order contain associated development to the NSIP. Work Numbers 3 to 10 are all:

2.24.1 directly associated with the NSIP, as they are all required for the construction, operation or maintenance of the NSIP, or to mitigate its impacts (paragraph 5(i) of the Guidance);

2.24.2 subordinate to the NSIP - none of them are an aim in themselves (paragraph 5(ii));

2.24.3 proportionate to the nature and scale of the NSIP (paragraph 5(iv)); and

2.24.4 of a nature which is typically brought forward alongside a generating station (paragraph 6).

- 2.25 Noting that there is no requirement for a development consent order to distinguish between these two categories, the undertaker has therefore chosen not to differentiate the NSIP and associated development works in Schedule 1 to the Order.

*Ancillary Matters*

- 2.26 The Order also contains several ancillary matters, i.e. provisions not consisting of development.

- 2.27 In accordance with sections 120(3) and 122 of, and Schedule 5 to, the 2008 Act, the Order would authorise the acquisition of land and rights over land. The book of reference (4.3, REP2-010) sets out what land is to be acquired and what other rights and interests will be affected. The Order and the book of reference should be read together with the statement of reasons (4.1, REP2-008) which accompanies the application and which sets out the justification for the acquisition or interference with each relevant plot of land. The plots of land are shown on the land plans (2.1, REP2-003).

2.28 The Order also seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. It is for this reason that under sections 117 and 120(5) of the 2008 Act the Order must be made by way of Statutory Instrument. The draft Order is therefore in that form.

2.29 Other ancillary matters include the permanent stopping up of streets, the temporary prohibition of streets and public rights of way, and the application and disapplication of legislation relating to the authorised development.

### 3. **THE PROVISIONS OF THE ORDER**

The Order consists of 43 operative provisions, each referred to as articles, and 13 Schedules. This part of the Explanatory Memorandum refers to the “undertaker” as defined in the draft Order (see further below).

#### 3.1 **Part 1 (preliminary)**

##### *Article 1 (Citation and commencement)*

3.1.1 Article 1 provides for the way in which the Order should be cited and when it takes effect.

##### *Article 2 (Interpretation)*

3.1.2 Article 2 provides for the interpretation of the rest of the Order, including the Schedules. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions that are relevant in the context of the authorised development, for example the “date of final commissioning.”

3.1.3 Definitions to note include:

- (a) "apparatus" is defined as having the same meaning as in Part 3 of the New Roads and Street Works Act 1991. However, for the purposes of the Order this has been expanded to include pipelines, aerial markers, cathodic protection test posts, field boundary markers, transformer rectification kiosks, electricity cables, telecommunications equipment and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the nature of street works which the undertaker needs to carry out. Street works will be required predominantly for the undertaker to construct, install and maintain Work Numbers 6, 7, 8 and 9. These works are generally located on the adopted highway (including verges and railway/watercourse crossings on highway structures) but they are also located within other forms of "street", which include unadopted roads, public rights of way and footpaths. Given this, the fact that the authorised development is located in an urban area, and the need to carry out detailed micro-siting should the Order be made, the undertaker cannot rule out at this stage that the items listed in the definition are not located in, on or under the land required for Work Numbers 6, 7, 8 and 9.

- (b) “commence” has been defined to exclude pre-commencement works (as defined below). This exclusion enables the undertaker to undertake certain preparatory works prior to the submission of relevant details for approval under the requirements contained in Schedule 2 to the Order, which the undertaker considers proportionate. The works that are excluded from the definition of “commence” are either de minimis or have minimal potential for adverse impacts. They may, in some cases, need to be carried out in order to comply with the pre-commencement requirements (for example to inform assessments and proposals required to be submitted for approval). However, the undertaker does recognise that prior to some of the works excluded being carried out, the undertaker should set out to the relevant planning authority how it intends to protect habitats and species. Therefore, requirement 4 (Pre-commencement biodiversity and landscape mitigation strategy) requires the undertaker to submit details to protect habitats and species during certain pre-commencement works. With the protection of requirement 4 in place, together with requirements 11 (code of construction practice) and 13 (construction traffic management plans) also applying to the pre-commencement works, the undertaker considers that it should be permitted to carry out the pre-commencement works following any grant of the Order while it is working to discharge the pre-commencement requirements, thereby helping to minimise the construction timetable.
- (i) The definition of “commence” used is tailored to the requirements of the authorised development, but the principle of excluding the listed activities that have minimal potential for adverse impacts or are de minimis is widely precedented (see for example the M20 Junction 10a Development Consent Order 2017, the Silvertown Tunnel Order 2018, the East Anglia ONE Offshore Wind Farm Order 2014 and the East Anglia THREE Offshore Wind Farm Order 2017).
- (c) “authorised development” is used and referred to throughout the Order. As there are no ancillary works included in the Order, the concept within the model provisions of an “authorised project” has not been used in the Order (there are however “ancillary matters” as defined in section 120(4) of the 2008 Act including compulsory purchase powers).
- (d) "biodiversity units" has been added to Article 2 to ensure that requirements 4 and 5 are clear. Requirements 4 and 5 require the undertaker to calculate the off-setting value of the land affected by the authorised development so that the undertaker can provide off-site compensation. Article 2 therefore contains definitions that make it clear how the compensation is calculated. Linked definitions to "biodiversity units" are "biodiversity off-setting scheme", "Defra biodiversity off-setting metric", and "off-setting value".
- (e) "limits of deviation" has been added to Article 2 and will operate by reference to the works plans (2.2, REP2-004). These are the areas

within which the authorised development can be constructed, see further below in relation to Article 3.

- (f) “maintain” has been added to Article 2 to make clear what activities are authorised under Article 4 (see below) during the operation of the authorised development, and in particular that it does not permit the undertaker to undertake such maintenance activities if they will give rise to any materially new or materially different environmental effects which are worse than those identified in the environmental statement (6.1 - 6.3, APP-038 – APP-100 as updated by REP2-013 - 041).
- (i) The definition has been drafted to directly reflect the nature and context of the authorised development, which will need to be properly maintained, managed and protected throughout its operational lifetime. The drafting, therefore, reflects this operational period and likely framework of maintenance that will be required whilst enabling technological and practice advancement and improvements within identified environmental performance standards. Therefore, some flexibility must be built in to what maintenance of the authorised development will involve, particularly to keep up with changing standards and controls and advances in technology.
- (ii) For the purposes of the authorised development, examples of the activities anticipated to be covered are listed below:
- (1) **Maintenance and inspection:** The ERF would be designed to operate for approximately 8,000 hours per year. Typically, each boiler line would undergo one planned minor outage (approx. 7 days in duration) and one planned major outage (approx. 14 days in duration) per year, which can be conducted without taking the entire plant offline. Statutory inspections on common plant (necessitating a full shut down for approx. 3 days) are required at least every two years. Additionally, the turbine and generator would typically be taken out of service for up to 8 days per year for inspections and maintenance.
- (2) **Repair / Refurbish / Replaced:** Through the planned maintenance regime and indeed through any unplanned maintenance required due to plant failures, it is likely that some plant and equipment, particularly those with moving parts, will need to be repaired or refurbished or indeed replaced.
- (3) **Adjust and Alter:** Through the planning maintenance regime, and indeed outside the planned maintenance regime, there may be a need



to adjust or alter elements comprising the authorised development to respond to changing conditions.

- (4) **Remove:** Adjustment and replacement activities will require plant, equipment and material to be removed.
  - (5) **Reconstruct:** If, for example, a moving part has to be dismantled in order to be repaired or refurbished, then that part will need to be reconstructed.
  - (6) **Improve:** Technology will improve over the life of the authorised development and therefore there may be opportunities to "improve" the workings of the plant and equipment by, for example, the removal of an old moving part and replacing it with a new, more efficient moving part.
- (iii) As is made clear by the definition, these activities apply to any part of the authorised development, but would not permit the undertaker from removing the whole of the authorised development and replacing it with an improved version. Furthermore, the development consent granted by virtue of Article 3 and Schedule 1 does not extend beyond the "authorised development" and the Order limits. In addition, the activities are restricted to those that do not give rise to materially new or materially different environmental effects which are worse than those assessed in the environmental statement.
- (g) "Order land" is defined as land required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown on the land plans (2.1, REP2-003). This land is coloured pink (land to be permanently acquired), blue (land in which the undertaker can create and acquire new rights) and blue hatched (special category land that the undertaker can create and acquire rights). In addition, the land plans identify where the creation and acquisition of rights is limited to footbridge level, road level or railway level. The land plans also shows the land over which temporary possession may be taken and land that is excluded from both the Order itself and the compulsory acquisition powers in the Order.
- (h) "Order limits" references the Order limits as shown on the works plans (2.2, REP2-004) – the extent to which the authorised development may be carried out.
- (i) "pre-commencement works" is defined as operations consisting of land and vegetation clearance (including the removal of topsoil and any mowing, coppicing, felling and pruning), environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including the making of trial boreholes), receipt and erection of construction plant and equipment, erection of construction welfare facilities, erection of any temporary means of

enclosure, the temporary display of site notices or advertisements and any other works that do not give rise to any likely significant adverse environmental effects as assessed in the environmental statement.

- (j) “undertaker” is defined as both Cory Environmental Holdings Limited and Riverside Energy Park Limited. Riverside Energy Park Limited is a 100% wholly owned subsidiary of Cory Environmental Holdings Limited and has been incorporated to act as a special purpose vehicle for the purposes of the investment in the authorised development. For this reason, both Cory Environmental Holdings Limited and Riverside Energy Park Limited are drafted as the “undertaker” for the authorised development given both companies would be taking the authorised development forward. The Cory Group corporate structure is illustrated in Appendix A to the Funding Statement (4.2, APP-017). The definition of “undertaker” also refers to those who may take the benefit of the Order pursuant to Articles 8 and 9 (see further below).

3.1.4 Paragraph (2) explains the definition of rights over land and clarifies the purpose of the power within the Order to impose restrictive covenants.

3.1.5 Paragraphs (3) and (4) define measurements and areas as approximate. This is required as, for example, in the book of reference (4.3, REP2-010) the plot areas are given in square metres, and each measurement is rounded up to the nearest whole square.

3.1.6 Paragraph (5) ties references to numbered works to those as numbered in Schedule 1 to the Order. The paragraph makes it clear that where reference is made to a number, such as numbered work 1, that reference is to the entirety of the numbered work in question, so numbered work 1A to 1E inclusive.

3.1.7 Paragraphs (6), (7), (8) and (9) provide additional definitions as to how references to certain words and phrases are to be interpreted.

## 3.2 **Part 2 (Principal Powers)**

### *Article 3 (Development consent granted by the Order)*

3.2.1 This Article confers the principal power to construct the authorised development. Schedule 1 describes the authorised development in detail, split into numbered works, each of which represents a different part of the authorised development.

3.2.2 Article 3(2) requires that the works authorised by the Order are situated within the areas shown on the works plans (2.2, REP2-004) and within limits of deviation which are also specified on the works plans.

3.2.3 Article 3(3) permits a downwards vertical deviation not exceeding 2 metres.

3.2.4 The purpose of this Article is to provide the undertaker with a necessary, but proportionate, degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved

cannot later be implemented for reasons which, at the time the application was made and the development consent was granted, could not reasonably have been foreseen. It also gives a proportionate amount of flexibility for the detailed design of the scheme, within the set limits.

3.2.5 This Article should also be read alongside requirement 3 in Schedule 2 of the Order, which provides for maximum and minimum parameters for certain key elements of the authorised development. This approach, whilst going beyond the model provisions, reflects a standard approach used in orders made under the Transport and Works Act 1992 and in recent development consent orders for onshore generating stations, including, for example, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017. Limits of deviation and parameters are appropriate in the current Order as they serve to precisely define the authorised development by reference to the works plans, whilst preserving a sensible amount of flexibility in the implementation of the authorised development to allow for variances in ground conditions and choice of appropriate equipment and technology. The environmental statement (6.1 - 6.3, APP-038 – APP-100 as updated by REP2-013 - 041) accompanying the application for development consent has assessed the authorised development within the full envelop provided by the limits of deviation.

#### *Article 4 (Maintenance of the authorised development)*

3.2.6 This Article provides for the maintenance of the authorised development. Article 4(1) closely reflects the terms of the model provisions. Article 4(2) restricts maintenance to the Order limits in order to provide a defined parameter within which this power can be exercised.

3.2.7 A definition of "maintain" has been included in Article 2 so that it is clear what the term involves (see above for the explanation). The environmental statement (6.1 - 6.3, APP-038 – APP-100 as updated by REP2-013 - 041) accompanying the application for development consent has assessed maintenance as defined in the Order.

#### *Article 5 (Operation of the authorised development)*

3.2.8 This Article permits the operation and use of the generating station comprised in the authorised development and is included pursuant to section 140 of the 2008 Act. Article 5(2) specifically preserves the need for any other operational consent that may be needed to operate the generating station in addition to the Order.

#### *Article 6 (Disapplication of legislative provisions)*

3.2.9 This Article provides (in reliance on section 120(5)(a) of the 2008 Act (what may be included in order granting development consent)) for the disapplication of certain additional consents, permits or requirements which would otherwise apply under public general legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.

- 3.2.10 Paragraphs (1) and (2) provide for the disapplication of consents ordinarily required from the Environment Agency under the Water Resources Act 1991 and the Environmental Permitting (England and Wales) Regulations 2016 ("the EP Regulations"). Specifically, these are the requirements for approval under flood defence byelaws made, or deemed to have been made, under the Water Resources Act 1991 and consents in respect of a 'flood risk activity' under the EP Regulations. These are consents for activities which may be a necessary part of constructing the authorised development. To provide certainty that the authorised development can proceed, the Order disappplies the requirement for a separate statutory consent to be obtained from the Environment Agency in relation to these activities. The requirement for a separate consent will be replaced by protective provisions for the protection of the Environment Agency in Part 4 of Schedule 10.
- 3.2.11 In accordance with section 150 of the 2008 Act, the consent of the Environment Agency to the inclusion of these provisions in the Order is required. The Environment Agency has consented to the disapplication of the legislative provisions set out in Articles 6(1) and 6(2) of the Order, which is recorded in a Statement of Common Ground between the undertaker and the Environment Agency (an advanced draft of which was submitted into the Examination at Deadline 2 (8.01.03, REP2-050)..
- 3.2.12 Paragraph (3) is included in the Order to address the overlap between the Order and the extant planning permission for the Riverside Energy from Waste Facility (known as the Riverside Resource Recovery Facility). The extant planning permission for the Riverside Resource Recovery Facility was made under the Town and Country Planning Act 1990 (reference 16/02167/FUL) by the relevant planning authority on 4 October 2017 (the "**Planning Permission**"). The undertaker has reviewed the Planning Permission and an inconsistency is likely to arise between the Order and the Planning Permission in respect of Conditions 1, 7, 22 and 23 of the Planning Permission:
- (a) Condition 1 requires the Riverside Resource Recovery Facility to be operated in accordance with the details contained in the application of 29 September 1999 as varied. Given the inconsistency between the Order and Conditions 7, 22 and 23 referred to below, there would therefore be an inconsistency with Condition 1 in that regard.
  - (b) Condition 7 requires the jetty and pier to remain available at all times for the operation of the Riverside Resource Recovery Facility and for no other purpose. This Condition is included in Article 6(3) to make it clear that there would be no breach of Condition 7 as a result of the jetty and pier being used for REP.
  - (c) Condition 22 requires a scheme for an ecological and management plan to be implemented during the operation of the Riverside Resource Recovery Facility. REP is located on areas which would give rise to a conflict with the ecological and management plan. Accordingly, this Condition is included in Article 6(3) to make it clear that there would be no breach of Condition 22 and no enforcement action can be taken.

- (d) Condition 23 requires bottom ash storage containers to be stored on the designated storage area. REP is located on areas which would give rise to a conflict with the designated ash storage area. Accordingly, this Condition is included in Article 6(3) to make it clear that there would be no breach of Condition 23 and no enforcement action can be taken.
- 3.2.13 Paragraph (3) is broadly comparable to the approach taken in the Drax Power (Generating Stations) Order and the approach taken in relation to inconsistency with local legislation in the National Grid (Hinkley Point C Connection Project) Order 2016.
- 3.2.14 Paragraph (4) is included in the Order to make it clear that following the end of temporary uses on plots 02/44 and 02/49 as shown on the Land Plans (2.1, REP2-003), a new planning permission is not required for the resumption of the extant use as permitted under the planning permission made by the relevant planning authority under the Town and Country Planning Act 1990 for those plots (reference 15/02926/OUTM). Paragraph (4) applies the right to revert as granted by section 57(2) of the Town and Country Planning Act 1990.
- 3.2.15 Paragraph (5) seeks to dissaply the temporary possession provisions of the Neighbourhood Planning Act 2017. This is required as the relevant sections of the Neighbourhood Planning Act 2017 have not been brought into force and subsidiary regulations to that Act have not yet been made, and there is therefore no certainty as to the requirements of the new temporary possession regime. As such, this enables the temporary possession regime created by this Order to be applied. This approach has recently been accepted by the Secretary of State in the Silvertown Tunnel Order 2018.
- 3.2.16 Section 120(5) of the 2008 Act provides that a development consent order may:
- (a) *"apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order,*
  - (b) *make such amendments, repeals or revocations of statutory provisions of local application as appear to the [Secretary of State] to be necessary or expedient in consequence of a provision of the order or in connection with the order;*
  - (c) *include any provision that appears to the [Secretary of State] to be necessary or expedient for giving full effect to any other provision of the order;*
  - (d) *include incidental, consequential, supplementary, transitional or transitory provisions and savings."*
- 3.2.17 The term 'statutory provision' is defined in section 120(6) of the 2008 Act as meaning *"a provision of an Act or of an instrument made under an Act."*
- 3.2.18 Section 120(5) is therefore wide enough to:

- (a) exclude statutory provisions under an Act and Regulations, as is being sought under Articles 6(1), (2) and (5);
- (b) apply a statutory provision under an Act, as is being sought under Article 6(4) (applying the right to revert under section 57(2) of the Town and Country Planning Act 1990); and
- (c) exclude conditions contained on a planning permission as is being sought under Article 6(3). A planning permission is an instrument made under an Act (the Town and Country Planning Act 1990) and its provisions (i.e. its conditions) are therefore 'statutory provisions' for the purposes of section 120(5)(a). Equally, if the Secretary of State considers it more appropriate, the disapplication can be promoted under section 120(5)(b) of the 2008 Act. In order to utilise section 120(5)(b) of the 2008 Act, the Secretary of State must be satisfied that the amendment is necessary or expedient. The undertaker considers that Article 6(3) is necessary to ensure that the Riverside Resource Recovery Facility is not placed in breach of its planning permission due to inconsistencies with the authorised development. As stated above, this provides clarity (to the extent there is inconsistency) in terms of enforcement and which consent has effect.

*Article 7 (Port of London Act 1968)*

3.2.19 This Article makes it clear that the undertaker is not relieved from any obligations to obtain any permit or licence under the Port of London Act 1968 in respect of works or operations carried out within the Thames under the powers of the Order.

*Article 8 (Benefit of this Order)*

3.2.20 This Article makes it clear that it is the undertaker who may take the benefit of the Order. The "undertaker" is defined in Article 2 as both Cory Environmental Holdings Limited and Riverside Energy Park Limited (as explained in Article 2 above).

3.2.21 Article 8(2) provides that Work Numbers 6(a) (but only in so far as Work Number 6(a) relates to Work Number 9), 9 and 10 are for the benefit of the undertaker and London Power Networks. This is because Work Numbers 6(a), 9 and 10 are the electrical connection, which may be installed by London Power Networks.

3.2.22 Article 8 is subject to Article 9, summarised below.

*Article 9 (Consent to transfer benefit of the Order)*

3.2.23 This Article makes detailed provision for the transfer of the benefit of the Order and supplements Article 8. Under Article 9, the consent of the Secretary of State is needed before the undertaker can transfer the benefit of the Order, but such consent is not required where:

- (a) the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989; or

- (b) where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant.

3.2.24 The undertaker notes the drafting in Article 7 of The National Grid (Richborough Connection Project) Development Consent Order 2017 and corrections made by The National Grid (Richborough Connection Project) (Correction) Order 2018 (“the Richborough Order”). However, the undertaker does not consider the approach taken in the Richborough Order, which is for an overhead 400kV electric line, is applicable to a generating station with an underground electrical connection. Indeed, the undertaker considers that the Secretary of State has made this difference clear in his decisions on The Wrexham Gas Fired Generating Station Order 2017 and the Richborough Order, given both were being determined at the same time (the former was made on 18 July 2017 and the latter made on 3 August 2017). Article 9 is based on the notification procedure contained in Article 7 of the Wrexham Gas Fired Generating Station Order 2017.

3.2.25 The justification for the provisions in Article 9(4) is that in such cases, the transferee or lessee will either be of a similar financial and regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory acquisition claims. Article 9(5) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Articles 9(6) to (8) provide further detail on the notification that is to be given.

*Article 10 (Guarantees in respect of payment of compensation)*

3.2.26 This Article relates to the funding mechanism for compulsory acquisition. This requires that before the powers in Articles 22, 24, 26, 31, 32 and 33 of the Order are exercised, the undertaker must put in place either a guarantee or an alternative form of security. This wording follows, as is applicable to the authorised development, that used in the Wrexham Gas Fired Generating Station Order 2017.

**3.3 Part 3 (Streets)**

*Article 11 (Street works)*

3.3.1 This Article is a model provision intended to permit in certain streets (as specified in Schedule 3) the carrying out of street works for the purposes of the authorised development. Article 11(3) brings in sections 54 to 106 of the New Roads and Street Works Act 1991 to apply to any street works carried out pursuant to Article 11(1). This provides protection for the street authority for the street in question.

*Article 12 (Power to alter layout, etc., of streets)*

3.3.2 This Article allows the undertaker to alter the layout of a street or carry out any works in the street as are set out in Schedule 4. Article 12(2) allows for the alteration of the layout of any street for the purposes of construction,

operation or maintenance, subject to obtaining the consent of the street authority and to the restoration of such streets to the reasonable satisfaction of the street authority.

*Article 13 (Temporary prohibition or restriction of use of streets and public rights of way)*

3.3.3 This Article provides for the temporary prohibition of the use, restriction of the use, alteration or diversion, of streets and public rights of way for the purposes of carrying out the authorised development. The Article largely follows the approach in the model provision in that it applies generally, and also specifically to certain streets and public rights of way (set out in Schedule 5 to the Order). There are consultation requirements before this power can be exercised (in respect of streets and public rights of way set out in Schedule 5) and consent requirements in respect of any other street and public right of way.

3.3.4 Article 13(2) confers a power on the undertaker, where the use of a street has been temporarily prohibited or restricted under the power in Article 13, to use such a street as a temporary working site.

3.3.5 Similar wording has been used in other made Orders, including Article 11 of the Wrexham Gas Fired Generating Station Order 2017, Article 12 of the Meaford Gas Fired Generating Station Order 2016, Article 12 of Progress Power (Gas Fired Power Station) Order 2015 and Article 11 of the Hirwaun Generating Station Order 2015.

*Article 14 (Permanent stopping up of streets)*

3.3.6 This Article is an amended model provision which provides for the permanent stopping up of the streets specified in Schedule 6.

*Article 15 (Access to works)*

3.3.7 This Article is a model provision which permits the undertaker to form new or to improve existing means of access in the locations specified in Parts 1 and 2 of Schedule 4. For clarity, temporary and permanent means of access are dealt with separately. Other means of access or works can also be provided in other locations reasonably required for the authorised development.

*Article 16 (Agreements with street authorities)*

3.3.8 This Article is a model provision which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street and the alteration and diversion of the street. In addition to the model provisions, it provides for such agreements to deal with the strengthening, improvement or repair of any streets, which is common in many similar orders. Similar wording has been used in other made Orders, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.

*Article 17 (Traffic regulation)*



- 3.3.9 This Article allows, with the consent of the traffic authority, the undertaker to regulate traffic on roads (defined as a public highway maintained by and at the expense of the traffic authority) to the extent that is necessary for the purposes of or in connection with the construction of the authorised development. The Article gives effect to any permission, prohibition or restriction on stopping, parking, waiting, loading or unloading of vehicles on any road and other provision as to the direction or priority of vehicular traffic on any road.
- 3.3.10 The Article also makes it clear that any prohibition, restriction or other provision made by the undertaker under Article 13 has effect as if duly made by the traffic authority under the Road Traffic Regulation Act 1984 or the local authority under the Road Traffic Regulation Act 1984.
- 3.3.11 The Article is not in the general model provisions but there is a precedent for it in the Wrexham Gas Fired Generating Station Order 2017 (Article 14), which referred in its Explanatory Memorandum to its use in other made orders (including Article 37 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011 and Article 38 of the Network Rail (Norton Bridge Areas Improvements) Order 2014).

#### 3.4 **Part 4 Supplemental Powers**

##### *Article 18 (Discharge of water)*

- 3.4.1 This Article is a model provision and sets out the circumstances in which the undertaker is entitled to discharge water into a sewer, watercourse or drain, and its purpose is to establish statutory authority for doing so.
- 3.4.2 The effect of this Article is that discharge can only be done with the consent of the owner, but consent cannot be withheld unreasonably.
- 3.4.3 Paragraph (6) makes clear that this Article does not obviate the need for an environmental permit for such discharge where this is relevant.
- 3.4.4 The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed and has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead.
- 3.4.5 This Article has precedent in many orders, including, for example, the A14 Cambridge to Huntingdon Improvement Scheme Order 2016 and is necessary for the authorised development in order to establish and regulate the undertaker's authority to discharge water.

##### *Article 19 (Authority to survey and investigate the land)*

- 3.4.6 This Article gives the undertaker the power to enter certain land for the purpose of surveying and investigating. It provides that the undertaker must give 14 days' notice before exercising the power of entry, and that compensation is payable for any loss or damage caused.
- 3.4.7 This Article is based on the model provisions, although Article 19(1) has been extended to land "which may be affected by the authorised

development" as surveys may need to be undertaken on such land to monitor the impacts of the authorised development (for example noise monitoring at residential receptors).

- 3.4.8 Article 19(6) applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development.

*Article 20 (Protective work to buildings)*

- 3.4.9 The purpose of this Article (which is included in the model provisions and the majority of made orders to date) is to allow the undertaker to undertake protective works such as underpinning to buildings affected by the authorised development and to set out the procedure that will apply in those circumstances.

- 3.4.10 Article 20(11) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused.

- 3.4.11 Given the urban area in which the authorised development is to be constructed, the Article is necessary to make appropriate provision to carry out protective works in the unlikely event that the need to do so arises.

*Article 21 (Felling or lopping of trees)*

- 3.4.12 This Article allows any tree or shrub within, or overhanging land within, the Order limits to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the authorised development or endanger anyone using it. Compensation is payable for any loss or damage caused.

- 3.4.13 The Article is included to ensure that the undertaker has adequate powers to construct, operate and maintain the authorised development. The undertaker does not have any other statutory powers available to it in order to fell or lop trees or shrubs and so the Article is considered necessary to ensure that trees or shrubs do not obstruct the construction, operation or maintenance of this nationally significant infrastructure.

**3.5 Part 5 (powers of acquisition)**

*Article 22 (Compulsory acquisition of land)*

- 3.5.1 This Article provides for the compulsory acquisition of such land as is required for the authorised development (or to facilitate the authorised development or is incidental to the authorised development). Article 22 makes consequential provision for the extinguishment of rights in the land in order to ensure that they cannot impact on implementation or use of the authorised development. The Article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in Article 26

(private rights). A similar approach was taken in the Wrexham Gas Fired Generating Station Order 2017.

- 3.5.2 Article 22(3) makes it clear that the powers in this Article are subject to the powers and restrictions in Article 24 (compulsory acquisition of rights), Article 25 (acquisition of subsoil only) and Article 31 (temporary use of land for carrying out the authorised development). This ensures that, where relevant, the undertaker can acquire only new rights or can only take temporary possession of land, and cannot acquire the freehold interest in that land.

*Article 23 (Time limit for exercise of authority to acquire land compulsorily)*

- 3.5.3 This Article gives the undertaker five years to issue ‘notices to treat’ or to execute ‘general vesting declarations’ to acquire the land that is subject to the power of compulsory acquisition. These are the two procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made. Five years from the date of the Order “coming into force” has been used to align with the date from which the undertaker may exercise any powers of compulsory acquisition that may be contained within the Order. Five years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in requirement 1 of Schedule 2 to the Order.

- 3.5.4 The Article also provides that land subject to the power of temporary possession for the carrying out of the authorised development, under Article 31 (temporary use of land for carrying out the authorised development), may not be occupied after the end of that same period unless the land is already being occupied by the undertaker in exercise of the powers of the Order. Such an Article is included in the model provisions and the majority of made orders to date.

*Article 24 (Compulsory acquisition of rights)*

- 3.5.5 This Article allows for rights over land to be acquired as well as (or instead of) the land itself, and also for new rights to be created over land.

- 3.5.6 It provides for such rights as may be required to be acquired by the undertaker over land which it is authorised to acquire under Article 22 (compulsory acquisition of land). The public benefit of this is that it would allow the undertaker, if appropriate, to reduce the area of outright acquisition and rely on the creation and acquisition of rights instead. A provision of this kind is usual in Transport and Works Act Orders and Hybrid Bills, and has been followed in a number of development consent orders, for example the Network Rail (North Doncaster Chord) Order 2012, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 and the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014.

- 3.5.7 Paragraph (2) provides that, for the land described in Schedule 7, the undertaker’s powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required for the purposes of the authorised development as specified in Schedule 7.

- 3.5.8 The power to impose restrictive covenants is necessary to enable the undertaker to secure protection for, in particular, the electrical connection from potentially damaging land use taking place above. The nature of the restrictions are described in Schedule 7 to the Order as a right to prevent any works on or uses of the land which may interfere with, damage or restrict access to the relevant infrastructure, including a right to prevent or remove the buildings, structures, works and other things.
- 3.5.9 Paragraph (3) provides that, where the undertaker needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.
- 3.5.10 Paragraph (4) introduces Schedule 8 which modifies the compulsory purchase and compensation provisions under general legislation. The modifications do not affect the entitlement to compensation, but generally ensure that the compensation code applies equally to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants in particular. For the purpose of section 126(2) of the 2008 Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.
- 3.5.11 The undertaker confirms that this Article and Schedule 8 have been drafted to take account of the Housing and Planning Act 2016 and the precedent in this regard created by the Silvertown Tunnel Order 2018 and followed in recently made orders such as the A19/A184 Testo's Junction Alteration Development Consent Order 2018.

*Article 25 (Acquisition of subsoil only)*

- 3.5.12 This Article permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired, and gives the undertaker the ability to minimise the extent of interests acquired from owners. This Article is appropriate in the context of cables or pipes to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. This is a model provision.

*Article 26 (Private rights)*

- 3.5.13 This Article applies to extinguish private rights generally. This enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the authorised development. It also provides for the extinguishment of private rights over such parts of the Order land as are already in the ownership of the undertaker, when any activity authorised by the Order interferes with or breaches those rights. In respect of land subject to the compulsory acquisition of rights or imposition of restrictive covenants, existing rights are extinguished only to the extent that the continued exercise of the existing right would be inconsistent with the enjoyment by the undertaker of the rights acquired, or restrictive covenants imposed, compulsorily. This approach is proportionate and draws on the precedents of Rookery South (Resource Recovery Facility) Order 2011, the

Wrexham Gas Fired Generating Station Order 2017 and many other made orders.

*Article 27 (Power to override easements and other rights)*

3.5.14 This Article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4) of the 2008 Act, and paragraphs 2 and 3, Part 1 of Schedule 5 of the 2008 Act. This Article has precedent in, for example, Article 32 of the Thame Water Utilities Limited (Thame Tideway Tunnel) Order 2014 and Article 24 of the Silvertown Tunnel Order 2018. This Article is supplementary to Articles 22 (compulsory acquisition of land) and 28 (compulsory acquisition of rights) and is necessary and expedient to give full effect to development consent under Article 3. The Article makes it clear that any "authorised activity", as defined in paragraph (2), is authorised notwithstanding that it may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to the user of land arising by virtue of contract. Compensation is also payable under section 7 and section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.

*Article 28 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)*

3.5.15 This Article applies the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 to compulsory acquisition under the Order. Vesting declarations are one of two procedures for the compulsory acquisition of land (the other being by means of serving a notice to treat). Vesting declarations allow title in the land concerned to pass to the acquiring authority more quickly than using the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure.

3.5.16 Such an article has been included in the model provisions and the majority of orders made to date but the drafting used in the Order has been adapted to incorporate and reflect the changes brought about by the Housing and Planning Act 2016. These modifications have precedent in the Silvertown Tunnel Order 2018.

*Article 29 (Modification of Part 1 of the Compulsory Purchase Act 1965)*

3.5.17 This Article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (4) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under Articles 30 or 31 of this Order. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London - West Midlands) Act 2017, the Wrexham Gas Fired Generating Station Order 2017 and the Silvertown Tunnel Order 2018.

*Article 30 (Rights under or over streets)*

- 3.5.18 This Article is a model provision which allows the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances (with slight refinements to the wording of the model provisions). This refined wording has precedent in the Progress Power (Gas Fired Power Station) Order 2015.
- 3.5.19 The purpose of this Article is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.
- 3.5.20 This Article has been included in the model provisions and the majority of orders made to date, such as the Progress Power (Gas Fired Power Station) Order 2015. It is considered that the Article remains necessary for the authorised development.

*Article 31 (Temporary use of land for carrying out the authorised development)*

- 3.5.21 This Article allows the land specified in Schedule 9 to be temporarily used for the carrying out of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way and provisions around giving 14 days' notice and restoration of the land following the temporary works.
- 3.5.22 Wording has been added to paragraph (1)(a)(ii) in order to allow Article 31 to be applicable in the context of land which may be the subject of compulsory acquisition, prior to any such compulsory acquisition taking place. New wording has also been added to paragraphs (3) and (4) to take in to account that the undertaker may, pursuant to Article 31(1)(a)(ii) temporarily use land that it may, eventually, compulsorily acquire. Should the undertaker compulsorily acquire the land that it is in temporary possession of, then the undertaker should remain in possession of such land and paragraph (1)(d) clarifies that the undertaker will be able to carry out the works authorised by the Order on such land. Wording has therefore been deleted in paragraph (8) to dovetail with the new drafting in paragraph (1). This wording closely follows that included within The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. Wording has been added at paragraph (9) to make clear that the Article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in the subsoil of any part of the Order land. It has precedent in the Wrexham Gas Fired Generating Station Order 2017.

*Article 32 (Temporary use of land for maintaining the authorised development)*

- 3.5.23 This Article provides for the temporary use of land for maintenance of the authorised development. There are clear limits on the length of time that the

undertaker can use land in this way, provisions around giving 28 days' notice and restoration of the land following the temporary possession.

- 3.5.24 This Article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land. The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of final commissioning as opposed to the date on which the authorised development is opened for use as this is more appropriate for this type of development. Similar wording has been used in other made Orders for gas fired generating stations, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.

*Article 33 (Statutory undertakers)*

- 3.5.25 This Article allows the undertaker to extinguish rights of statutory undertakers, and remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the land plans and described in the book of reference (4.3, REP2-010). In practice it is impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.
- 3.5.26 As the land where this power may be exercised is shown on the land plans, and the beneficiaries of such rights are identified in the book of reference, the requirements of regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.
- 3.5.27 This Article has precedent in a number of made orders, for example, the Wrexham Gas Fired Generating Station Order 2017.
- 3.5.28 The exercise of this Article is subject to the protective provisions contained in Schedule 10.

*Article 34 (Apparatus and rights of statutory undertakers in stopped up streets)*

- 3.5.29 This Article governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are stopped up by the Order. Without the Article, the statutory utility would not have access to the apparatus, since there would no longer be a right of way along the street. The Article is a model provision but has been amended in that paragraph (2) onwards has been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 10.

*Article 35 (Recovery of costs of new connections)*

- 3.5.30 This Article (which reflects the model provisions) provides that if a gas, water, electricity or sewerage undertaker's or public communications provider's apparatus is removed thereby interrupting the service to owners or occupiers of premises, their costs incurred in obtaining a new service can be recovered from the undertaker.

### 3.6 **Part 6 (miscellaneous and general)**

#### *Article 36 (Application of landlord and tenant law)*

- 3.6.1 This Article is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development.
- 3.6.2 This provision is required to ensure that there is no impediment to the construction, use or maintenance of the authorised development.

#### *Article 37 (Operational land for the purposes of the 1990 Act)*

- 3.6.3 This Article is a model provision which has the effect of ensuring that the land on which the authorised development is constructed is not excluded from being "operational land" under the Town and Country Planning Act 1990 by the effect of section 263 of that Act. A similar provision has been included in other made Orders for gas fired generating stations, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.

#### *Article 38 (Defence to proceedings in respect of statutory nuisance)*

- 3.6.4 This Article provides that no one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of fumes, gas, dust, steam, smell, accumulations or deposits which are prejudicial to health or a nuisance, artificial light, noise or any other statutory nuisances created in the course of carrying out construction or maintenance of the authorised development or which is an unavoidable consequence of the authorised development.

#### *Article 39 (Protective provisions)*

- 3.6.5 This Article provides for Schedule 10, which protects the interests of certain statutory undertakers, to have effect.

#### *Article 40 (Certification of plans etc.)*

- 3.6.6 This Article is a model provision which provides for the submission of various document and plans (as listed in Schedule 11) to the Secretary of State in order that they may be certified as being true copies.

#### *Article 41 (Service of notices)*

- 3.6.7 This Article, governs how any notices that may be served under the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the 2008 Act only apply to notices served under the 2008 Act itself and do not apply to notices



served under the Order. This Article has precedent in a number of orders, for example, the Wrexham Gas Fired Generating Station Order 2017.

*Article 42 (Procedure in relation to certain approvals etc.)*

- 3.6.8 This Article provides that Schedule 12 (procedure in relation to certain approvals etc.) is to have effect in relation to all consents, agreements or approvals contemplated by any provision of the Order. The exception to this is Schedule 10 (protective provisions) or any dispute under Article 20(6) (disputes over the necessity or expediency of protective works), to which Article 42(3) and Article 42(4) apply.
- 3.6.9 Schedule 12 has been used in various development consent orders and can be seen in a similar form in the Wrexham Gas Fired Generating Station Order 2017. Schedule 12 reflects Advice Note 15 (July 2018).
- 3.6.10 In summary, Schedule 12 ensures that any consents, agreements or approvals (a) cannot be unreasonably withheld or delayed; and (b) are deemed to be granted after a period of 9 weeks if no decision is made, beginning with the day any application for a consent, agreement or approval is made. The purpose of Article 42 and Schedule 12 is to draw together the usual provisions for consents, agreements and approvals under the Order, rather than including them for each consent, agreement or approval required under the Order which the undertaker considers is repetitive.
- 3.6.11 Under Article 42(3), any difference or dispute arising under Schedule 10 or Article 20(6) is to be referred to arbitration in accordance with the arbitration rules set out in Schedule 13.

*Article 43 (No double recovery)*

- 3.6.12 This Article provides that compensation is not payable both under this Order and any other enactment, contract or other rule of law. It follows that well established principle of equivalence that a claimant is compensated for no more and no less than their loss.
- 3.6.13 This Article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, the National Grid (Richborough Connection Project) Development Consent Order 2017 and the North London Heat and Power Generating Station Order 2017.

## **3.7 Schedules**

*Schedule 1 (Authorised development)*

- 3.7.1 Schedule 1 describes the authorised development in detail, split into "work numbers", each of which represents different elements of the authorised development. This split of the authorised development between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The split also enables the Order and works plans (2.2, REP2-004) to delineate the area within which each "work" can be constructed, maintained and operated (see Articles 3 and 4).

- 3.7.2 Paragraphs 2.8 to 2.21 of this Memorandum summarise the authorised development. A further more detailed, description of the various elements of the authorised development is provided in Chapter 3 of the environmental statement (6.1, REP2-013).
- 3.7.3 Schedule 1 is drafted so as to be non-specific as to technology and configuration of the plant.
- 3.7.4 The mechanics of the drafting in Schedules 1 and 2 ensure that the undertaker does not exceed the basis of the assessment in the environmental statement. This is achieved through a number of mechanisms in the Order which together ensure:
- (a) Article 3 and Schedule 1 provide the power to build the authorised development. Pursuant to Article 3(2), each numbered work must be situated within the area delineated on the works plans (2.2, REP2-004) – thus, for example, the energy recovery facility can only be built within the area for Work Number 1A. Given these overarching constraints, there is certainty as where each element can be built;
  - (b) The relevant parameters secured via requirement 3 set maximums and, where applicable, minimums for relevant elements of the authorised development, including all those which are relied on for the assessment of effects in the environmental statement. These parameters are based on application of the Rochdale Envelope principle, such that maximum and, where applicable, minimum building dimensions have been presented and assessed in the environmental statement, recognising that the final building massings may differ from (but will never be materially larger than) these maxima depending on the technology provider selected;
  - (c) In terms of detailed design, requirement 2 of Schedule 2 provides that the undertaker must obtain the approval of the relevant planning authority to the layout, scale and external appearance of new permanent buildings and structures as listed in requirement 2 prior to commencing these works.
- 3.7.5 The combined effect of and relationship between these provisions ensures that the authorised development will not give rise to environmental effects beyond those which have been assessed.

#### *Schedule 2 (Requirements)*

- 3.7.6 This Schedule sets out the requirements which apply to the carrying out and operation (including maintenance) of the authorised development under the Order. The requirements closely relate to the mitigation set out in Chapter 17 to the environmental statement (6.1, APP-054) and a number of them specifically refer to the environmental statement and other application documents (in particular, 'outline' strategies or plans) in order to ensure that the mitigation or other measures outlined in those documents are secured.
- 3.7.7 The requirements operate by reference to preventing the undertaker from either carrying out "pre-commencement works" or "commencing" any part of

the authorised development until it has met its obligations under the relevant requirements.

- 3.7.8 In the undertaker's opinion the requirements in Schedule 2 are all:
- (a) necessary and relevant to planning and the development to be permitted as they are outputs from the environmental statement;
  - (b) enforceable and precise in their language; and
  - (c) reasonable in all other respects.
- 3.7.9 *Requirement 1: Time limits* - This requirement provides that the authorised development must not commence later than 5 years from the date of the Order coming into force.
- 3.7.10 *Requirement 2: Detailed design approval* - This is based on a model provision. It requires the specific design details of Work Numbers 1A(iv), 1B(iv), 1C, 1E, 2, 3, 4, 5 and 6 to be submitted to and approved by the relevant planning authority before commencement of that work number, and for the authorised development to be constructed in accordance with those approved details. The details submitted must be in accordance with the design principles, which is a certified document under Article 40 and Schedule 11. This requirement relates to these work numbers only as they are the parts of the authorised development including elements whose visual appearance has been assessed as being important in terms of the authorised development's visual impact (see Chapter 9 of the environmental statement, 6.1, REP2-021)).
- 3.7.11 *Requirement 3: Parameters of authorised development* – This requirement requires that the authorised development must not exceed the maximum dimensions and levels and, where applicable, the minimum dimensions as set out in Table 1. This requirement ensures that the authorised development does not exceed the envelope that has been assessed by the environmental statement (6.1 - 6.3, APP-038 – APP-100 as updated by REP2-013 - 041). The maximum depth is subject to Article 3(3), which enables the undertaker to deviate vertically to any extent downwards not exceeding 2 metres.
- 3.7.12 *Requirement 4: Pre-commencement biodiversity and landscape mitigation strategy* – As explained in respect of Article 2, the definition of “commence” excludes pre-commencement works, meaning that certain works can be carried out without triggering “commencement”. The undertaker recognises that in respect of some of those works, whilst de minimis, there is a need for a “pre-commencement biodiversity and landscape mitigation strategy” that will protect habitats and species whilst those “pre-commencement” works are being carried out. This requirement secures that strategy.
- 3.7.13 *Requirement 5: Biodiversity and landscape mitigation strategy* – This requirement prevents any part of the authorised development from commencing until a biodiversity and landscape mitigation strategy has been submitted to and approved by the relevant planning authority. The requirement is drafted to enable the undertaker to submit a strategy in respect of the part of the authorised development that it wants to

"commence", without having to provide a strategy covering all parts. Therefore, the requirement could be discharged through one strategy or multiple strategies. The requirement requires the submitted strategy or strategies to be substantially in the accordance with the outline biodiversity and landscape mitigation strategy (which is a certified document under Article 40 and Schedule 11) and the requirement also lists certain items that it must contain. The strategy / strategies is/are to be implemented as approved.

- 3.7.14 *Requirement 6: Replacement planting for Work No. 9* – This requires that no part of Work No. 9 may commence until details of any trees, shrubs and hedgerows to be removed during the construction of Work Number 9 and the details of planting to replace any such trees, shrubs and hedgerows have been submitted to and approved by the relevant planning authority. This replacement planting must be carried out in accordance with the approved details and maintained for a period of 12 months.
- 3.7.15 *Requirement 7: Archaeology* – This requirement prevents any part of Work Numbers 1, 2, 3, 4, 5 and 9 from commencing until a written scheme of investigation for that part has been submitted to and approved by the relevant planning authority. Any archaeological investigations must be carried out in accordance with the approved scheme and by a suitably qualified person or organisation.
- 3.7.16 *Requirement 8: Highway access* – This requirement provides that no part of Work Numbers 6, 8, 9 and 10 may commence until details of the siting, design and layout of any new permanent or temporary means of access to a highway in that part or any alteration to an existing means of access to a highway in that part have been submitted to and approved by the relevant planning authority. The requirement also prevents the undertaker from exercising the power contained in Article 14 (permanent stopping up of streets) unless and until a plan showing the layout for the termination of the street (as specified in columns (1) and (2) of Schedule 6) has been submitted to and approved by the relevant planning authority.
- 3.7.17 *Requirement 9: Surface and foul water drainage* – This requirement provides that no part of Work Numbers 1, 2, 3, 4, 5 and 6 may commence until details of the surface and foul water drainage strategy for that part has been submitted to and approved by the relevant planning authority. The requirement is drafted to enable the undertaker to submit a strategy in respect of the part of the authorised development that it wants to "commence", without having to provide a strategy covering all parts. Therefore, the requirement could be discharged through one strategy or multiple strategies. The requirement requires the submitted strategy or strategies to be substantially in accordance with the outline drainage strategy (which is a certified document under Article 40 and Schedule 11). The strategy / strategies is/are to be implemented as approved.
- 3.7.18 *Requirement 10: Ground conditions and ground stability* – This requirement provides that no part of Work Numbers 1, 2, 3, 4, 5, 6, 7 and 8 may commence until an investigation and assessment report to identify ground conditions and ground stability has been submitted to and approved by the relevant planning authority. Paragraph (2) requires the submitted report to

identify the extent of any contamination and remedial measures to be taken with paragraph (4) requiring the authorised development to be carried out in accordance with the approved report. Paragraph (3) requires a remediation verification plan to be submitted for that part should the report identify any necessary remedial measures.

- 3.7.19 *Requirement 11: Code of construction practice* – This requirement prevents any part of the pre-commencement works from being carried out and any part of the authorised development from commencing until a code of construction practice has been submitted to and approved by the relevant planning authority. The requirement is drafted to enable the undertaker to submit the code in respect of the part of the authorised development that it wants to "carry out" or "commence", without having to provide a code covering all parts. Therefore, the requirement could be discharged through one code or multiple codes. The requirement requires the submitted code or codes to be substantially in accordance with the outline code of construction practice (which is a certified document under Article 40 and Schedule 11) and the requirement also lists certain items that it must contain. The code/codes is/are to be implemented as approved.
- 3.7.20 *Requirement 12: Construction hours* – This requirement specifies the hours in the day within which all construction work associated with Work Numbers 1, 2, 3, 4 and 5 must be carried out. The restrictions do not apply to work that is approved in advance by the relevant planning authority, is within existing or new buildings, is associated with an emergency or is associated with slip form working.
- 3.7.21 *Requirement 13: Construction traffic management plan* – This requirement prevents any part of the pre-commencement works from being carried out and any part of the authorised development from commencing until a construction traffic management plan has been submitted to and approved by the relevant planning authority. The requirement is drafted to enable the undertaker to submit the plan in respect of the part of the authorised development that it wants to "carry out" or "commence", without having to provide a plan covering all parts. Therefore, the requirement could be discharged through one plan or multiple plans. The requirement requires the submitted plan or plans to be substantially in accordance with the outline construction traffic management plan (which is a certified document under Article 40 and Schedule 11) and the requirement also lists certain items that it must contain. The plan/plans is/are to be implemented as approved by the relevant planning authority in consultation with the highway authority and, for streets within London Borough of Bexley, Transport for London.
- 3.7.22 *Requirement 14: Heavy commercial vehicle movements delivering waste* – Requirement 14(1) restricts the number of two-way vehicle movements made by heavy commercial vehicles delivering waste to Work Number 1A and Work Number 1B to 90 per day. Requirement 14(2) provides that where there is a "jetty outage", the restriction is increased to 300 per day, but with a restriction of 30 movements between the hours of 0730-0900 and 1630-1800. Requirement 14(3) requires that save where there is a "jetty outage", incinerator bottom ash must be removed only via the River. A "jetty outage" is defined in requirement 14(5).

- 3.7.23 *Requirement 15: Operational worker travel plan* – Before the date of final commissioning, the undertaker must submit an operational worker travel plan for those working at the authorised development to the relevant planning authority (in consultation with the relevant highway authority and, for streets within the London Borough of Bexley, Transport for London) for approval. This plan must be substantially in accordance with the outline worker travel plan (which is a certified document under Article 40 and Schedule 11). The plan is to be implemented as approved.
- 3.7.24 *Requirement 16: Operational lighting strategy* – This requirement prevents any part of Work Numbers 1, 2, 3, 4, 5 and 6 from commencing until a written scheme for the management and mitigation of operational external light emissions for that part has been submitted to and approved by the relevant planning authority. The requirement is drafted to enable the undertaker to submit the strategy in respect of the part of the authorised development that it wants to "commence", without having to provide a strategy covering all parts. Therefore, the requirement could be discharged through one strategy or multiple strategies. The requirement requires the submitted strategy or strategies to be substantially in accordance with the outline lighting strategy (which is a certified document under Article 40 and Schedule 11). The strategy/strategies is/are to be implemented as approved.
- 3.7.25 *Requirement 17 – River Wall* – This requirement prevents any part of Work Number 1 from commencing until a river wall condition survey on the parts of the river wall within the order limits is submitted to and approved by the Environment Agency. The requirement requires any identified remedial works to bring the defence up to the applicable standard (being a tidal defence up to a good standard considering a design life of 100 years) to be carried out within a set timeframe.
- 3.7.26 *Requirement 18 – Community benefits* – This requirement prevents any part of the authorised development from commencing until an employment and skills plan has been submitted to and approved by the relevant planning authority. The plan is to be implemented as approved.
- 3.7.27 *Requirement 19: Notice of start of commissioning and notice of date of final commissioning* – This requirement requires the undertaker to give notice to the relevant planning authority of the intended start of commissioning of Work Number 1, with notice of the actual start of commissioning being given not later than 7 days from the actual start. Within 7 days of completing final commissioning, the undertaker is to provide the relevant planning authority with notice of the date upon which the commissioning process was duly completed (which can clearly be monitored by the processes being carried out at the plant). This requirement assists the relevant planning authority in monitoring the requirements.
- 3.7.28 *Requirement 20: Combined heat and power* – This requirement requires the undertaker to submit a CHP review to update the Combined Heat and Power Statement submitted with the Application (5.4, APP-035) and the Combined Heat and Power Supplementary Report (5.4.1, REP2-012)) to the relevant planning authority 12 months after the date of final commissioning. This requirement sets out what the CHP review must assess and include in each

review. A revised CHP review is required to be submitted to the relevant planning authority every four years following the submission of the last CHP review. This requirement also requires the undertaker to install the necessary pipework to the site boundary once certain details are known and to establish a working group to progress the actions in the approved/revised CHP review and monitor and report on progress to the relevant planning authority.

- 3.7.29 *Requirement 21: Decommissioning* – This requirement requires the undertaker to submit a scheme for the restoration and aftercare of the land for Work Number 1, to the relevant planning authority, within 24 months of the permanent cessation of the operation of the authorised development. The relevant planning authority must approve the scheme before any decommissioning works are carried out and the scheme must be implemented with the phasing set out therein.
- 3.7.30 *Requirement 22: Amendments to approved details* – This requirement allows the relevant planning authority to approve amendments to certified documents, the parameters in requirement 3, and other details, schemes or plans approved by the relevant planning authority. This is to allow flexibility in the detailed design stage, however this flexibility is given strict parameters in that it only applies to the extent the subject matter of the approval is unlikely to result in materially new or materially different effects to those assessed in the environmental statement (6.1 - 6.3, APP-038 – APP-100 as updated by REP2-013 - 041). A similar Requirement appeared in the Progress Power (Gas Fired Power Station) Order 2015.
- 3.7.31 *Requirement 23: Flood Risk Activity Permit Area* – This requirement sets out the area where no part of Work Number 1E and Work Number 5 can be constructed and where no hazardous material can be stored during construction and operation of the authorised development.
- 3.7.32 *Requirement 24: Finished floor levels* – This requirement specifies the minimum finished floor levels of Work Numbers 1, 2, 3, 4, 5 and 6.

*Schedule 3 (Streets subject to street works)*

- 3.7.33 This Schedule sets out the streets that would be subject to street works (including reference to the relevant access and public rights of way plans (2.3, REP2-005), the location and the specific street). The Schedule relates to Article 11 (street works).

*Schedule 4 (Streets subject to permanent and temporary alteration of layout)*

- 3.7.34 This Schedule sets out the streets to be permanently altered (Part 1) or temporarily altered (Part 2), by reference to the access and public rights of way plans (2.3, REP2-005). The Schedule relates to Articles 12 (power to alter layout, etc., of streets) and 15 (access to works).

*Schedule 5 (Temporary prohibition or restriction of the use of streets or public rights of way)*

- 3.7.35 This Schedule sets out the streets that will be subject to temporary prohibition or restriction and the public rights of way that will be subject to

temporary prohibition or restriction (including reference to the relevant access and public rights of way plans (2.3, REP2-005), the location and the extent of the temporary prohibition or restriction). The Schedule relates to Article 13 (temporary prohibition or restriction of use of streets and public rights of way).

*Schedule 6 (Permanent stopping up of streets)*

3.7.36 This Schedule sets out the streets that will be subject to permanent stopping up by reference to the access and public rights of way plans (2.3, REP2-005). The Schedule relates to Article 14 (permanent stopping up of streets).

*Schedule 7 (Land in which only new rights etc. may be acquired)*

3.7.37 This Schedule specifies both the areas of land in which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue on the land plans (2.1, REP2-003), and the nature of the rights in column 2 is explained by reference to the relevant work numbers and the corresponding works plans (2.2, REP2-004). The Schedule relates to Article 24 (compulsory acquisition of rights).

*Schedule 8 (Modification of compensation and compulsory purchase enactments for creation of new rights)*

3.7.38 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in orders as made, including the Hinkley Point C (Nuclear Generating Station) Order 2013 and the National Grid (King's Lynn B Power Station Connection) Order 2013. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016. The Schedule relates to Article 24 (compulsory acquisition of rights).

*Schedule 9 (Land of which temporary possession may be taken)*

3.7.39 This Schedule sets out the land of which only temporary possession may be taken, pursuant to Article 31 (temporary use of land for carrying out the authorised development). This land is shown yellow on the land plans (2.1, REP2-003), and the purpose for the temporary possession is described by reference to the relevant work numbers and corresponding works plans (2.2, REP2-004).

*Schedule 10 (Protective provisions)*

3.7.40 This Schedule includes draft protective provisions for the following:

- (a) Part 1 – for the protection of RRRL;
- (b) Part 2 – for the protection of electricity, gas, water and sewerage undertakers. It is likely that before the end of the Examination, a new Part will be inserted for Thames Water;
- (c) Part 3 – for the protection of operators of electronic communications code networks;



- (d) Part 4 – for the protection of the Environment Agency. The undertaker is in active discussions with the Environment Agency, with Part 4 currently in draft;
- (e) Part 5 - for the protection of railway interests. The undertaker is in active discussions with Network Rail, with Part 5 currently in draft;
- (f) Part 6 – for the protection of National Grid. The undertaker is in active discussions with the National Grid, with Part 6 currently in draft.

*Schedule 11 (Documents and plans to be certified)*

3.7.41 This Schedule lists the documents that the undertaker must have certified pursuant to Article 40.

*Schedule 12 (Procedure in relation to certain approvals)*

3.7.42 This Schedule, which relates to Article 42 (procedure in relation to certain approvals), sets out the procedure for the discharge of all consents, agreements or approvals contemplate by the Order other than Schedule 10 and Article 20(6). The Schedule sets out time periods within which decisions must be made, and provides for deemed approval in certain circumstances. The Schedule makes provision for appeals to be made in the event of a refusal of an application or if the relevant authority requires further information to be provided in relation to that application. Schedules similar to Schedule 12 have been used in various made orders, with the drafting in Schedule 12 having regard to Advice Note 15 (July 2018). The process is required in order to ensure that decisions are dealt with efficiently so that the authorised development is not held up.

*Schedule 13 (Arbitration rules)*

3.7.43 This Schedule sets out the rules that apply to the arbitration of any difference or dispute arising under Schedule 10 or Article 20(6). Schedule 13 relates to Article 42(procedure in relation to certain approvals). These rules have been included to ensure that there is no delay to the resolution of any dispute or difference.

## Appendix 1

~~2009~~ 2021 No. ~~2265~~

**INFRASTRUCTURE PLANNING**

~~The Infrastructure Planning  
(Model Provisions) (England  
and Wales) Order~~ Riverside Energy Park Order  
~~2009~~ 2021

Made - - - - ~~1st September 2009~~ 2021\*

*Laid before Parliament 8th September 2009*

Coming into force - - ~~1st October 2009~~ 2021\*

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£15.00

STATUTORY INSTRUMENTS

~~2009~~ No. ~~2265~~

PART 1

PRELIMINARY

**INFRASTRUCTURE PLANNING**

~~The Infrastructure Planning (Model Provisions) (England and  
Wales) Order 2009~~

*Made* ——— ~~1st September 2009~~

*Laid before Parliament* ~~8th September 2009~~

*Coming into force* — ~~1st October 2009~~

The Secretary of State, in exercise of the powers conferred by section 38 of the Planning Act 2008(a), makes the following Order:

1. Citation and commencement

1. This Order may be cited as the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 and shall come into force on 1st October 2009.

**Model provisions**

2. The provisions set out in the Schedules to this Order, of which those contained in Schedules 1 and 4 are of general application and those contained in Schedules 2 and 3 are of application to development relating to railways and harbours, respectively, are prescribed as model provisions

~~for the purposes of section 38 of the Planning Act 2008.  
Signed by authority of the Secretary of State for Communities and Local Government  
Bill McKenzie  
Parliamentary Under Secretary of State  
1st September 2009 Department for Communities and Local Government~~

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~~1985~~

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**Interpretation**

1.—(1) In this Order—

SCHEDULE 10 — PROTECTIVE PROVISIONS

PART 1 — FOR THE PROTECTION OF RRRL

PART 2 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

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

PART 4 — FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

PART 5 — FOR THE PROTECTION OF RAILWAY INTERESTS

PART 6 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION

SCHEDULE 11 — DOCUMENTS AND PLANS TO BE CERTIFIED

SCHEDULE 12 — PROCEDURE IN RELATION TO CERTAIN APPROVALS ETC.

SCHEDULE 13 — ARBITRATION RULES

An application under section 37 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 the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 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 Examining Authority has submitted a report and recommendation to the Secretary of State under section 83 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 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(d) and has had regard to the documents and matters referred to in section 104(2) 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 of the 2008 Act(e), the Secretary of State has applied the relevant tests and is satisfied that they have been met.

In accordance with section 132(3) of the 2008 Act, the Secretary of State is satisfied, having considered the report and recommendation of the Examining Authority, that the parcels of open space comprised within the Order land, when burdened with a new right created under this Order, will be no less advantageous than they were before the making of this Order to the following persons: (a) the persons in whom it is vested; (b) other persons, if any, entitled to rights of common or other rights; and (c) the public.

Accordingly, the Secretary of State, in exercise of the powers in sections 114, 115, 120, 122 and 123 of the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the Riverside Energy Park Order 202[\*] and comes into force on [\*] 202[\*].

#### Interpretation

2.—(1) In this Order, unless otherwise stated—

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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 section 25(20) to the Localism Act 2011 (c.20).

(d) S.I. 2017/572.

(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).

“the 1961 Act” means the Land Compensation Act ~~1961(a)~~1961(a);  
(a) ~~1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.~~

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“the 1965 Act” means the Compulsory Purchase Act ~~1965(a)~~1965(b);

(a) 1961 c.33. Section 1 was amended by paragraphs 37(a) and (b) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Sections 2 and 3 were repealed by paragraph 38 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 4 was amended by paragraphs 39(a), (b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307. There are other amendments to the 1961 Act which are not relevant to this Order.

(b) 1965 c.56. Section 1 was amended by part 1 of Schedule 6 and paragraph 14(2) of Schedule 4 to the Acquisition of Land Act 1981, section 4 of and paragraph 13(1)(a) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11), and paragraph 1 of Schedule 10 to the Courts Act 2003. (c.39); Sections 2, 7, 9, 14, 21, 22, 24, 26, 28 and 30, paragraph 2 of Schedule 2 and paragraphs 2(3) and 7(2) of Schedule 4 were amended by section 9(3) and paragraph 5 of Schedule 3 to the Gas Act 1986 (c.44), section 245(4) of the Town and Country Planning Act 1990 (c.8), section 151(5) of and paragraph 2(1) of Schedule 18 to the Water Act 1989 (c.15), section 13(2) of the Local Government (Miscellaneous Provisions) Act 1976 (c.57), section 7(1)(b) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), section 30(1) of the Acquisition of Land Act 1981 (c.67) and section 129 of the Local Government Act 1972 (c.70), sections 39 and 40 and paragraphs 11(1) to Schedule 5 and paragraph 1 to Schedule 4 of the Forestry Act 1967 (c.10), section 49(7)(i) of the Agriculture Act 1967 (c.48), sections 120(3), 124(2) and 273(1) of the Local Government Act 1972 (c.70), article 4 of S.I. 1978/829, article 3 of S.I. 1978/1125 and Part I of Schedule 6 to the New Towns Act 1981 (c.64), with section 129 words of enactment omitted under authority of section 3 of the Statute Law Revision Act 1948 (c.62); Sections 2, 7, 9, 14, 21, 22, 26, 28 and 32 were amended by sections 120(3), 124(2), and 273(1) of the Local Government Act 1972 (c.70), article 4 of S.I. 1978/829, article 3 of S.I. 1978/1125, Schedule 6 Part I of the New Towns Act 1981 (c.64), sections 6, 37(4)(5), 38, and paragraphs 2(2) and 15(9) of Schedule 2 and paragraphs 3(1), 5(1) and 8 of Schedule 5 to the Channel Tunnel Act 1987 (c.53), sections 2(2), and paragraph 1 of Schedule 2 Part II and paragraph 1(8) of Schedule 3 to the Dartford-Thurrock Crossing Act 1988 (c.20), section 10(1) and paragraph 6 of Schedule 3 Part I to the Electricity Act 1989 (c.29), sections 151(5), 151(6), 155(3)–(7) of and paragraphs 2(2)(3)–(8) of Schedule 18 and paragraphs 6(1)(a) of Schedule 20 to the Water Act 1989 (c.15), section 10(1) of and paragraphs 7-13 of Schedule 3 Part I to the Electricity Act 1989 (c.29), and extended by paragraph 16(1) of Schedule 2 to the Telecommunications Act 1984 (c.12); Section 3 was amended by paragraph 3 of Schedule 15(1) to the Planning and Compensation Act 1991 (c.34); Section 4 was amended by s182(1) of the Housing and Planning Act 2016 (c.22); Section 4A was inserted by s202(1) of the Housing and Planning Act 2016 (c.22); Section 5 was amended by section 65 of the Planning and Compensation Act 1991 (c.34) and paragraph 60 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 6 was amended by paragraph 61 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 7 was also extended by section 237(4)(a) of the Town and Country Planning Act 1990 (c.8), and by section 78(2)(a), and paragraph 5(4) of Schedule 10 to the Housing Act 1988 (c.50); Section 8 was amended by paragraphs 62(b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 and paragraph 2 of Schedule 17(1) to the Housing and Planning Act 2016 (c.22); Section 9 was also amended by section 1(1) of and Schedule 1 to the Statute Law (Repeals) Act 1973 (c.39), section 52(10)(a) of the Land Compensation Act 1973 (c.26), section 13(3) and paragraphs 4 and 5 to Schedule 3 of the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), section 146(1) of the Town and Country Planning Act (c.8) and by section 54(7) of the Land Compensation Act (c.26); Section 10 was amended by paragraph 63 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 and paragraphs 13(2)(a) and (b) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11); Section 11 was amended by s186(2)(a)(i), s186(2)(a)(ii), s186(2) (b), s187(2), s188 and paragraph 6 of Schedule 14 to the Housing and Planning Act 2016 (c.22), paragraphs 14(3)(a) and (b) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), paragraph 12(1) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 No.1, and paragraph 64 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 11A was added by s186(3) of the Housing and Planning Act 2016 (c.22); Section 11B was added by s187(3) of the Housing and Planning Act 2016 (c.22); Section 12(6) was amended by paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c.22); Section 13 was amended by section 139 (5), (6), (7), (8), (9), paragraph 28(2) of Schedule 13 and paragraph 1 of Schedule 23(3) to the Tribunals, Courts and Enforcement Act 2007 (c.15); Section 15 was amended by paragraph 65 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 16 was amended by paragraph 66 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 17 was amended by paragraph 67 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 18 was amended by paragraph 68 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 19 was amended by paragraph 69 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 20 was amended by paragraph 4 of Schedule 15(1) to the Planning and Compensation Act 1991 (c.34) and paragraph 70 of Schedule 1 to the Transfer of Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 22 was also modified by paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), and excluded by section 10(3) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66); Section 23 was amended by paragraph 4(1) of Schedule 11(2) to the Constitutional Reform Act 2005 c.4; Section 24 was also amended by s17(2)(3) and Schedule 2 to the Rentcharges Act 1977 (c.30); Section 25 was amended by paragraph 4(1) of Schedule 11(2) to the Constitutional Reform Act 2005 c.4, and s1(1) and Part IX of Schedule 1 to the Statute Law (Repeals) Act (c.39); Section 26 was also amended by section 13(3) and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34); Section 27 was repealed by article 3 and Schedule 1 to S.I. 1990/776; Section 29 was repealed by paragraph 1 of Schedule 23(3) to the Courts and Enforcement Act 2007 (c.15); Section 30 was also amended by section 34(1) and paragraph 14(4) of Schedule 4 to the Acquisition of Land Act 1981 (c.67); Section 31 was amended by s34(1) and paragraph 14(5) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), paragraph 19(b) of



“the 1980 Act” means the Highways Act ~~1980(b)~~[1980\(a\)](#);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981**(b)**;

“the 1984 Act” means the Road Traffic Regulation Act 1984**(c)**;

“the 1990 Act” means the Town and Country Planning Act ~~1990(e)~~[1990\(d\)](#);

“the 1991 Act” means the New Roads and Street Works Act ~~1991(d)~~[1991\(e\)](#);

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[Schedule 15\(II\) to the Planning and Compensation Act 1991 \(c.34\) and paragraph 12\(2\) of Schedule 5 to the Church of England \(Miscellaneous Provisions\) Measure 2006 No.1; Section 32 was also amended by section 34\(1\), and paragraph 14\(6\) of Schedule 4 to the Acquisition of Land Act 1981 \(c.67\); Paragraph 10 of Schedule 1 was amended by Schedule 9\(3\), Schedule 3 Part II paragraph 5 of the Gas Act 1986 \(c.44\), sections 10 and 14\(4\) of the Land Commission Act 1967 \(c.1\), section 28\(4\) and Schedule 3 paragraph 3 of the Courts Act 1971 \(c.23\), sections 47\(6\) and 52\(2\) of the Highways Act 1971 \(c.41\), section 10\(1\) and Schedule 3 paragraphs 6-13 of the Electricity Act 1989 \(c.29\), section 78\(2\)\(b\) and Schedule 10 Part III paragraph 20-23 of the Housing Act 1988 \(c.50\), section 578 of the Housing Act 1985 \(c.68\), section 37\(4\) of the Land Drainage Act 1976 \(c.70\), sections 6\(2\)\(4\)\(6\)\(7\) and 27, Schedule 4 Part II and Schedule 7 paragraph 5\(5\) of the Development of Rural Wales Act 1976 \(c.75\), article 4 of S.I. 1978/268, section 250 and Schedule 19 of the Highways Act 1980 \(c.66\), section 245\(4\) of the Town and Country Planning Act 1990 \(c.8\), section 151\(5\) and Schedule 18 paragraph 2\(1\) \(with sections 58\(7\), 101\(1\), 141\(6\), 160\(1\)\(2\)\(4\), 163, 189\(4\)-\(10\), 190, 193\(1\), Schedule 26 paragraphs 3\(1\)\(2\), 17, 40\(4\), 57\(6\), 58\) of the Water Act 1989 \(c.15\), section 13\(2\) of the Local Government \(Miscellaneous Provisions\) Act 1976 \(c.57\), section 7\(1\)\(b\) of the Compulsory Purchase \(Vesting Declarations\) Act 1981 \(c.66\), section 30\(1\) of the Acquisition of Land Act 1981 \(c.67\), and section 129 of the Local Government Act 1972 \(c.70\) Words of enactment omitted under authority of section 3 of the Statute Law Revision Act 1948 \(c.62\) and modified by section 13\(3\), Schedule 3 paragraphs 4 and 5 of Agriculture \(Miscellaneous Provisions\) Act 1968 \(c.34\); Paragraph 2 of Schedule 2 was modified by section 13\(3\) and paragraphs 4 and 5 of Schedule 3 to the Agriculture \(Miscellaneous Provisions\) Act 1968 \(c.34\), section 10\(2\) of the Compulsory Purchase \(Vesting Declarations\) Act 1981 \(c.66\), paragraph 14 of Schedule 3A to the Town and Country Planning Act 1968 \(c.72\) and Schedule 2, Appendix A to the Land Commission \(Dissolution\) Act 1971 \(c.18\); Paragraph 13 of Schedule 2A was amended by paragraph 3 of Schedule 17\(1\) to the Housing and Planning Act 2016 \(c.22\). There are other amendments to the 1965 Act which are not relevant to this Order.](#)

[\(a\) 1980 c.66. Section 328 was amended by sections 27, 28 and 54 of , and paragraphs 1\(2\) of Part I and 1\(2\) of Part III of Schedule 2 to, the Town and Country Planning Act 1990 \(c.8\), by sections 3 and 19 of, and paragraph 9 of Schedule 3 to, the Dartford-Thurrock Crossing Act 1988 \(c.20\), s35, and by paragraphs 7\(1\) and 10\(1\) of Schedule 4 to the Channel Tunnel Act 1987 \(c.53\), and extended by sections 58\(7\), 101\(1\), 141\(6\), 160\(1\)\(2\)\(4\), 163, 189\(4\)-\(10\), 190, 193\(1\) of, and paragraph 1\(2\)\(xxv\)\(8\) of Schedule 25 and paragraphs 3\(1\)\(2\), 17, 40\(4\), 57\(6\), and 58 of Schedule 26 to, the Water Act 1989 \(c.15\), and by s112\(1\)\(3\) of, and paragraph 2\(4\)\(d\)\(6\)\(9\) of Schedule 16, paragraphs 33 and 35\(1\) of Schedule 17 to, the Electricity Act 1989 \(c.29\), and by s67\(1\)\(3\) of, and paragraph 2\(1\)\(xi\) of Schedule 7 and paragraph 33 of Schedule 8 to, the Gas Act 1986 \(c.44\). There are other amendments to the 1980 Act which are not relevant to this Order.](#)

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

[\(c\) 1984 c.27.](#)

[\(d\) 1990 c.8. Section 106 was amended by section 12\(1\) of the Planning and Compensation Act 1991 \(c.34\), paragraphs 3\(2\) and 3\(3\) of Schedule 2 to the Growth and Infrastructure Act 2013 \(c.27\), sections 33\(2\), 33\(3\), 33\(4\) and 34\(5\) of the Greater London Authority Act 2007 \(c.24\), and by sections 174\(2\)\(a\), 174\(2\)\(b\) and 174\(2\)\(c\) of the Planning Act 2008 \(c.29\); Section 264 was amended by paragraph 54 of Schedule 1 to the Water Consolidation \(Consequential Provisions\) Act 1991 \(c.60\), paragraph 9 of Schedule 3\(1\) to the British Waterways Board \(Transfer of Functions\) Order 2012/1659, paragraph 14 of Schedule 1\(1\) to the Transport for London \(Consequential Provisions\) Order 2003/1615, paragraphs 20\(a\) and 20\(b\) of Schedule 12 to the Localism Act 2011 \(c.20\), paragraph 18 of Schedule 4\(2\) to the Infrastructure Act 2015 \(c.7\), and by paragraph 13\(a\)\(i\) of Schedule 1\(III\) to the Transport Act 2000 \(Consequential Amendments\) Order 2011/4050. There are other amendments to the 1990 Act which are not relevant to this order.](#)

[\(e\) 1991 c.22. Section 48 was amended by section 124\(2\) of the Local Transport Act 2008 \(c.26\); Section 49 was amended by paragraphs 117\(a\) and 117\(b\) of Schedule 1\(2\) to the Infrastructure Act 2015 \(c.7\); Section 50 was amended by section 124\(3\) of the Local Transport Act 2008 \(c.26\); Section 51 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 54 was amended by the transitional provisions specified in article 6\(1\)-\(3\) and \(5\) of SI 2007/3174 and by section 49\(1\) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 55 was amended by section 51\(9\) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\), and subject to transitional provisions specified in article 6\(4\) and \(5\) of SI 2007/3174 by section 49\(2\) of the Traffic Management Act 2004 \(c.18\); Section 56 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\), and wording was amended subject to transitional provisions specified in article 5 of SI 2007/3174 by section 43 of the Traffic Management Act 2004 \(c.18\); Section 56A was inserted subject to transitional provisions specified in article 4 of SI 2007/1890 and article 5 of SI 2007/3174 by Section 44 of the Traffic Management Act 2004 \(c.18\); Section 57 was amended by section 52\(3\) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 58 was amended subject to transitional provisions specified in article 7 of SI 2007/3174 and article 6 of SI 2007/1890 by the Traffic Management Act 2004 \(c.18\) and amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 58A was inserted subject to transitional provisions specified in article 7 in SI 2007/1890 and article 8 in 2007/3174 by section 52\(1\) of the Traffic Management Act 2004 \(c.18\); Section 59 was amended by section 42 of Traffic Management Act 2004 \(c.18\); Section 60 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 63 was amended by paragraph 118 of Schedule 1\(2\) to the Infrastructure Act 2015 \(c.7\); Section 64 was amended by section 52\(4\) of the Traffic Management Act 2004 \(c.18\) and by paragraph 12 of Schedule 7 to the Road Traffic Act 1991 \(c.40\); Section 65 was amended by paragraph 1 of Schedule 1 to the Traffic](#)

“the 2008 Act” means the Planning Act ~~2008(e);2008(a)~~;

“access and public rights of way plans” means the plans of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the access and public rights of way plans for the purposes of this Order;

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

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in Part 3 of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks; electricity cables; telecommunications equipment and electricity cabinets;

~~“ancillary works” means the ancillary works described in Part 2 of Schedule A (authorised project) [and any other works authorised by the Order] and which are not “authorised development” means the development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;~~

~~“authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;~~

~~“the authorised project” means the authorised development and the ancillary works authorised by this Order;~~

~~“the “book of reference” means the book of reference document of that description referred to in Schedule 11 (documents and plans to be certified) certified by the decision-maker Secretary of State as the book of reference for the purposes of this Order;~~

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~~Management Act 2004 (c.18); Section 66 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 67 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 68 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 69 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 70 was amended subject to transitional provisions specified in article 9 in SI 2007/3174 by section 54 of the Traffic Management Act 2004 (c.18) by section 40(3) of that same Act, and by regulation 17(2) of Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007/1951; Section 71 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 73F was added by section 59 of Traffic Management Act 2004 (c.18); Section 74 was amended by sections 256(2), (3)(a), (3)(b), (4), (5), (6) and (7) of the Transport Act 2000 (c.38), sections 40(4) and 52(5) of the Traffic Management Act 2004 (c.18) and by paragraph 119 of Schedule 1(2) to the Infrastructure Act 2005 (c.7); Section 74A was amended by section 255(1) of the Transport Act 2000 (c.38), section 40(4) of the Traffic Management Act 2004 (c.18) and by paragraphs 120(2) and 120(3) of Schedule 1(2) to the Infrastructure Act 2015 (c.7); Section 74B was amended by section 255(1) of the Transport Act 2000 (c.38); Section 79 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 83 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 86 was added by paragraph 121 of Schedule 1(2) to the Infrastructure Act 2015 (c.7); Section 88 was amended by sections 52(6) and 40(5) of the Traffic Management Act 2004 (c.18); Section 89 was amended by section 52(7) of the Traffic Management Act 2004 (c.18) and by paragraph 57(1) of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c.60); Section 92 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 93 was amended by section 49(3) of the Traffic Management Act 2004 (c.18); Section 95A was inserted subject to transitional provisions specified in article 3 of SI 2007/1890 and article 3 of SI 2007/3174 by section 41(1) of the Traffic Management Act 2004 (c.18); Section 106 was amended by section 41(2) of the Traffic Management Act 2004 (c.18) and by paragraph 122 of Schedule 1(2) of the Infrastructure Act 2015 (c.7). There are other amendments to the 1991 Act which are not relevant to this Order.~~

(a) ~~2008 c.29. Section 14 was amended by article 2(2) of the Infrastructure Planning (Waste Water Transfer and Storage) Order 2012/1645 and by articles 2(2)(a) and 2(2)(b) of the Infrastructure Planning (Radioactive Waste Geological Disposal Facilities) Order 2015/949; Section 74 was amended by Localism Act 2011 (c.20) Schedule 25(20) paragraph 1 and Localism Act 2011 (c.20) Schedule 13(1) paragraph 29(3); Section 83 was amended by paragraphs 35(2) and 35(3) of schedule 13(1) and paragraph 1 of section 25(20) to the Localism Act 2011 (c.20); Section 103 was amended by paragraph 48(4) of Schedule 13(1) and paragraph 1 of Schedule 25(20) to the Localism Act 2011 (c.20); Section 104 was amended by paragraphs 49(2), (3)(a), (3)(b), (3)(c), (4), (5)(a), (5)(b), (6) and (7) of Schedule 13(1) to the Localism Act 2011 (c.20) , and by section 58(5) of the Marine and Coastal Access Act 2009 (c.23); Section 114 was amended by paragraphs 55(2)(a), (2)(b) and (3) of Schedule 13(1) to the Localism Act 2011 (c.20); Section 115 was amended by paragraph 1 of Schedule 25(20) to the Localism Act 2011 (c.20), sections 160(2), (3), (4), (5), and (6) of the Housing and Planning Act 2016 (c.22); Section 120 was amended by section 140 and paragraph 60(2) and (3) of Schedule 13(1) to the Localism Act 2011 (c.20); Section 122 was amended by paragraph 62 of Schedule 13(1) to the Localism Act 2011 (c.20); Section 125 was amended by paragraph 17 of Schedule 16 to the Housing and Planning Act 2016 (c.22); Section 127 was amended by section 23(2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013, (c.27) and by paragraph 64(2) of Schedule 13(1) to the Localism Act 2011 (c.20); Section 134 was amended by 142(2)(a) and (3) and paragraph 1 of Schedule 25(21) to the Localism Act 2011 (c.20), and paragraphs 6(1)(a) and 6(1)(b) of Schedule 1 to the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017/16; Section 138 was amended by sections 23(4)(a), 23(4)(b) and 23(4)(c) of the Growth of Infrastructure Act 2013 (c.27); Section 152 was amended by paragraph 293 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 161 was amended by paragraph 4(3) of Schedule 8(1) to the Marine and Coastal Access Act 2009 (c.23) and by paragraphs 41(3)(a) and 41(3)(b) of Schedule 4(1) to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015/664.~~

“biodiversity units” means the product of the size of an area, and the distinctiveness and condition of the habitat it comprises to provide a measure of ecological value (as assessed using the Defra biodiversity off-setting metric);

“biodiversity off-setting scheme” means a scheme which will deliver biodiversity enhancements which must not be less than the off-setting value;

“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;

“CHP statement” means the document of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the CHP statement for the purposes of this Order;

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

“commissioning” means the process of assuring that all systems and components of the authorised development or part of the authorised development (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with design objectives, specifications and operational requirements of the undertaker and “commission” and other cognate expressions are to be construed accordingly;

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

“date of final commissioning” means the date on which the commissioning of the authorised development (or any part of the authorised development) is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 16 of Schedule 2;

“Defra biodiversity off-setting metric” means the Defra mechanism to quantify impacts on biodiversity that allows biodiversity losses and gains affecting different habitats to be compared and ensure offsets are sufficient to compensate for residual losses of biodiversity;

“design principles” means the document of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the design principles for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by any other means but while in electronic form;

“environmental statement” means the document of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the environmental statement for the purposes of this Order;

~~“the decision-maker”~~“flood risk activity” has the same meaning as in ~~section 103 of the 2008 Act;~~the Environmental Permitting (England and Wales) Regulations 2016(a);

“flood risk assessment” means the document of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

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

“FRAPA drawing” means the drawing of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the FRAPA drawing for the purposes of this Order;

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

~~“the land plan” means the plan certified as the land plan by the decision-maker~~“land plans” means the plans of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the land plans for the purposes of this Order;

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(a) S.I.2016/1154.

“limits of deviation” means the limits of deviation shown for each numbered work on the works plans;

“London Power Networks” means London Power Networks PLC (company number 03929195) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP or a subsidiary of London Power Networks PLC;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not replace the whole of, the authorised development, but only insofar as such activities do not give rise to any materially new or materially different environmental effects which are worse than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“off-setting value” means the net biodiversity impact of the authorised development, calculated using the Defra biodiversity off-setting metric, measured in biodiversity units;

“operational period” means the period from the date of final commissioning to the permanent cessation of the operation of Work Number 1;

“this Order” means the Riverside Energy Park Order 2021[\*];

“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 as shown on the land plan which is within the limits of land to be plans;

acquired and described in the book of reference;

(a) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(b) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1)(2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(c) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(d) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(e) 2008 c.29.

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“the “Order limits” means the limits shown on the works plan-plans within which the authorised project development may be carried out;

“outline biodiversity and landscape mitigation strategy” means the document of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the outline biodiversity and landscape strategy for the purposes of this Order;

“outline code of construction practice” means the document of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the outline code of construction practice for the purposes of this Order;

“outline construction traffic management plan” means Appendix L of the transport assessment;

“outline drainage design strategy” means Appendix G of the flood risk assessment;

“outline lighting strategy” means the document of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the outline lighting strategy for the purposes of this Order;

“outline worker travel plan” means Appendix M of the transport assessment;

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

“pre-commencement works” means operations consisting of land and vegetation clearance (including the removal of topsoil and any mowing, coppicing, felling and pruning), environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including the making of trial boreholes), receipt and erection of construction plant and equipment, erection of construction welfare facilities, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and any other works that do not give rise to any likely significant adverse environmental effects as assessed in the environmental statement;

~~Act 1981(a);~~

“relevant planning authority” ~~means~~ means the London Borough of Bexley and any successor to its functions in relation to land in its area, and Dartford Borough Council and any successor to its functions in relation to land in its area;

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

“RRRL” means Riverside Resource Recovery Limited (company number 03723386) whose registered office is at 2 Coldbath Square, London, EC1R 5HL together with its successors in title of that part of the Order land identified in the book of reference;

~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii) a National Park Authority;~~

~~(iii) the Broads Authority; and~~

~~(iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~

~~“rights plan” means the plan certified as the rights plan by the decision maker for the purposes of this Order;~~

~~“the sections” means the sections shown on the plan certified as the section drawings plan by the decision maker for the purposes of this Order;~~

“statutory undertaker” means any person falling within section 127(8), ~~128(5) or 129(2) of the 2008 Act and includes a public communications provider defined by section 151(1) of the Communications Act 2003;~~

~~2008 Act;~~

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

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

~~“tree preservation order” has the meaning given in section 198 of the 1990 Act;~~

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

“transport assessment” means the document of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the transport assessment for the purposes of this Order;

“Transport for London” means the body corporate established under section 154 of the Greater London Authority Act 1999 of 55 Broadway, London, SW1H 0BL and any successor to its functions in relation to streets within the London Borough of Bexley;

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

“undertaker” means ~~the person who~~ Cory Environmental Holdings Limited (company number 05360864) and Riverside Energy Park Limited (company number 11536739) or any other person who for the time being has the benefit of this Order in accordance with ~~section~~articles 8 and 9 of this Order;

~~156 of the 2008 Act;~~

“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

~~“the works plan” means the plan certified as the works plan by the decision maker~~ “works plans” means the plans of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the works plans for the purposes of this Order.

~~(2) (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 to any trusts or incidents (including restrictive covenants) to which the land is subject 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) (3)~~ All distances, directions and lengths referred to in this Order are approximate ~~and distances.~~

(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 (authorised development) and shown on the works plans and a reference in this Order to a work designated by a number or by a combination of letters and numbers (for example, “Work No. 1A” or “numbered work 1A”) is a reference to the work so designated in Schedule 1 (authorised development) and a reference to “Work No. 1” or “numbered work 1” means numbered works 1A to 1E inclusive.

(6) References to “Schedule” are, unless otherwise stated, references to Schedules to this Order.

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

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

(9) References in this Order to “part of the authorised development” means all or part of any numbered work.

## PART 2

### PRINCIPAL POWERS

~~between points on a work comprised in the authorised project shall be taken to be measured along that work.~~

~~[NOTE: In the case of off shore development, which is outside the area of any planning authority, it will be necessary to identify another appropriate body as the relevant planning authority.]~~

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

~~3.2—(1) Subject to the provisions of this Order and to the requirements ~~in the Schedule (requirements) attached to this Order the undertaker is granted—~~~~

~~(a), the undertaker is granted development consent for the authorised development ~~;~~ and (b) ~~consent for the ancillary works,~~ to be carried out within the Order limits.~~

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

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

(3) In carrying out and maintaining the authorised development the undertaker may deviate vertically from the levels of the authorised development to any extent downwards not exceeding 2 metres.

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#### **Maintenance of authorised ~~project~~ development**

4.3—(1) The undertaker may at any time maintain the authorised ~~project, 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 the authorised development**

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

(2) Other than as set out in this Order, this article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of an electricity generating station.

#### **Disapplication of legislative provisions**

6.—(1) The provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991 do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

(2) Regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 does not apply in respect of any flood risk activity carried out under the powers conferred by this Order.

(3) To the extent that there is an inconsistency between any provision of this Order and Conditions 1, 7, 22 and 23 contained in the planning permission granted under the 1990 Act (reference 16/02167/FUL) for the Riverside Energy from Waste Facility (known as the Riverside Resource Recovery Facility), there is no breach of such conditions and no enforcement can be taken in respect of such conditions following the carrying out by the undertaker of the pre-commencement works or following commencement.

(4) In the event that planning permission 15/02926/OUTM is implemented and the use of the land the subject of that planning permission is subsequently used for the temporary uses as authorised under this Order, a new planning permission is not required for the resumption, following the end of the temporary uses, of the land's development and use for which planning permission 15/02926/OUTM grants consent.

(5) The provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under articles 31 (temporary use of land for carrying out the authorised development) and 32 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

#### **Port of London Act 1968**

7.—(1) Nothing in this Order relieves the undertaker of any obligation to obtain any permit or licence under the Port of London Act 1968 in respect of works or operations carried out within the Thames under the powers of this Order.

(2) In this article “the Thames” means that part of the river Thames within the Order limits and within the limits of the Port of London Authority, as described in Schedule 1 (description of port limits) to the Port of London Act 1968.

## Benefit of this Order

~~8.4—(1) Subject to paragraph (2) and article 5–9 (consent to transfer benefit of the Order), the provisions of articles [ ] and [ ]~~specify relevant articles~~ shall this Order have effect solely for the benefit of ~~specify person, body or class~~the undertaker.~~

~~(2) Paragraph (1) does not apply to Work Nos. 6(a) (but only in so far as Work No. 6(a) relates to Work No.9), 9 and 10 for which consent is granted by this Order for the benefit of the undertaker and London Power Networks.~~

~~of person.~~

~~[NOTE: This article is required where provisions of the Order are specific to a named undertaker or class of undertaker (see section 156(2) of the 2008 Act).]~~

## Consent to transfer benefit of the Order

~~9.5.—(1—(1) Except where paragraph (4) ~~The~~ applies, the undertaker may, with the consent of the ~~specify person or body~~—Secretary of State—~~

~~(a) (a)—~~transfer to another person (“the transferee”) all or any ~~or all part~~ of the benefit of the provisions of this Order (including any part of the authorised development) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or

~~(b) (b)—~~grant to another person (“the lessee”)—for a period agreed between the undertaker and the lessee, all or any ~~or all part~~ of the benefit of the provisions of this Order (including any part of the authorised development) and such related statutory ~~rights as may be so~~ rights as may be agreed between the undertaker and the lessee.

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

~~(3) (3)—~~The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) ~~shall be 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.

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

~~6.—(1) Subject to the modifications set out in paragraph (2) the following provisions of the ~~insert short title of the relevant Act~~ shall be incorporated in this Order—~~

~~(a) section[s] X ~~specify relevant section(s)~~.~~

~~(2) The modifications are: ~~insert relevant modifications~~.~~

~~(3) In construing the ~~insert short title of the relevant Act~~ as incorporated the following expressions shall have the following meanings: ~~insert relevant expressions and definitions~~~~

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

~~7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—~~

~~(a) the defendant shows that the nuisance—~~

~~(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given~~

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

~~7~~

~~under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(a); or~~

~~(ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or~~

~~(b) the defendant shows that the nuisance—~~

~~(i) relates to premises used by the undertaker for the purposes of or in connection with~~



~~the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25; or~~

~~(ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.~~

~~(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall 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 project.~~

(4) This paragraph applies where—

- (a) the transferee or lessee holds a licence under section 6 of the Electricity Act 1989(a); 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 any claims made;
  - (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 paragraph (4) applies the undertaker must notify the Secretary of State in writing before transferring or granting all or any part of the benefit of the provisions of this Order and such related statutory rights 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 (5) 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.

### Guarantees in respect of payment of compensation

10.—(1) The undertaker must not begin to 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); or

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(a) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), sections 89(3), 136(1), 136(2), 145(5), 145(6), and 145(7), and paragraph 5 of Schedule 19 and paragraph 1 of Schedule 23(1) to the Energy Act 2004 (c.20), articles 6(2)(a), 6(2)(b), 6(3), 6(4) of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012/2400, regulation 19 of the Electricity and Gas (Internal Markets) Regulations 2011/2704, and by paragraph 2 of Schedule 8 to the Climate Change Act 2008 (c.27).

- (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).
- (2) The provisions are—
- (a) article 22 (compulsory acquisition of land);
  - (b) article 24 (compulsory acquisition of rights);
  - (c) article 26 (private rights);
  - (d) article 31 (temporary use of land for carrying out the authorised development);
  - (e) article 32 (temporary use of land for maintaining the authorised development); and
  - (f) article 33 (statutory undertakers).
- (3) A guarantee or alternative form of security given in respect of any liability 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.
- (5) The guarantee or alternative form of security to be provided pursuant to paragraph (1) does not apply to the exercise of the provisions referred to in paragraph (2) in, on or under any street.

## PART 3

### STREETS

#### Street works

~~11.8.—(1)—~~(1) The undertaker may, for the purposes of the authorised **project** ~~development~~, enter on so much of any of the streets specified in Schedule ~~B-3~~ (streets subject to street works) ~~as is within the Order limits and may—~~ **and may—**

- (a) ~~(a)~~ break up or open the street, or any sewer, drain or tunnel under it;
- (b) ~~(b)~~ drill, tunnel or bore under the street;
- (c) ~~(c)~~ place apparatus in the street;
- (d) ~~(d)~~ maintain apparatus in the street ~~or~~, change its position or remove it; and
- (e) ~~(e)~~ execute any works required for or incidental to any works referred to in ~~sub-paragraphs~~ sub-paragraph (a), (b), (c) ~~and~~ or (d).

(2) ~~(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) ~~(3)~~ Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

~~(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act. [NOTE: This article should not be used for the purposes of authorising street works that affect a trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets subject to street works). For any street works affecting a trunk road the undertaker should make an application for a licence under section 50 of the 1991 Act.]~~

#### **Stopping-up Power to alter layout, etc., of streets**

~~9.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2)~~

~~of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.~~

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

~~8~~

~~(2) No street specified in columns (1) and (2) of Part 1 of Schedule C (being a street to be stopped up for which a substitute is to be provided) 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~~

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

(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 or maintaining the authorised development alter the layout of any street and, without limiting the scope of this paragraph, the undertaker may—

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

(b) make and maintain passing places.

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

(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.

### Temporary prohibition or restriction of use of streets and public rights of way

13.—(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 or public right of way and may for any reasonable time—

(a) divert the traffic from the street or public right of way; and

(b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way 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) and vehicles going to or from premises abutting a street or public right of way affected by the temporary alteration, diversion, prohibition or restriction of a street or public right of way under this article if there would otherwise be no such access.

~~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).~~

(4) ~~(3) No street~~ 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 or public rights of way specified in columns (1) and (2) of ~~Part 2 of Schedule C (being a street to be~~ Schedule 5 (temporary

prohibition or restriction of the use of streets or public rights of way) 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— stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under~~

- ~~(a) this article unless the condition 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.~~

### Permanent stopping up of streets

**14.—**~~(1)~~ Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project development, stop up each of the streets specified in columns (1) and (2) ~~of Parts 1 and 2 of Schedule C-6 (permanent stopping up of streets to be stopped up)~~ to the extent specified, by reference to the letters ~~and numbers~~ shown on the works access and public rights of way plan, as described in column (3) ~~of those Parts~~ of that Schedule.

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

**8**

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

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

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

~~(b) there is no right of access to the land from the street concerned; or~~

~~(c) there is reasonably convenient access to the land otherwise than from the street concerned; or~~

~~(d) the owners and occupiers of the land have agreed to the stopping up.~~

~~(2) (5) Where a street has been stopped up under this article—~~

~~(a) (a) all rights of way over or along the street so stopped up shall be are extinguished; and~~

~~(b) (b) the undertaker may appropriate and use for the purposes of the authorised project development so much of the site of the street as is bounded on both sides by land owned by the undertaker.~~

~~(3) (6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~

~~(4) (7) This article is subject to article 32-34 (apparatus ete- and rights of statutory undertakers) in stopped up streets.~~

### **Public rights of way**

**10.—**~~(1) With effect from the [date of publication of this Order] [the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan], [the section of] the public right of way (being a [insert one of: footpath/bridleway/byway open to all traffic/restricted byway]) shown marked in [red] between~~

the points [A] and [B] on the rights plan is extinguished.

(2) With effect from [that same date] *[insert later date]* an alternative section of *[insert description of right of way of that same type]* as marked in [green] between the points [C] and [D] on the rights plan is created.

(3) In this article —

“implementation plan” means the written plan agreed between the undertaker and the local highway authority for creation of the agreed alternative right of way to the defined standard; and

“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.

#### **Temporary stopping up of streets**

~~11.~~ (1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street ~~and may for any reasonable time —~~

~~9~~

~~(a) divert the traffic from the street; and~~

~~(b) subject to paragraph (2), prevent all persons from passing along the street.~~

~~(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.~~

~~(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.~~

~~(4) The undertaker shall not temporarily stop up, alter or divert —~~

~~(a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and~~

~~(b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.~~

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

#### **Access to works**

~~15.12.~~ The undertaker may, for the purposes of the authorised ~~project —~~ development —

~~(a)~~ (a) form and lay out layout the permanent means of access, or improve existing means of access, in the location specified in columns (1) and (2) specified in Part 1 of Schedule E 4 (access to works); and streets subject to permanent alteration of layout);

~~(b)~~ form and layout the temporary means of access in the locations specified in Part 2 of Schedule 4 (streets subject to temporary alteration of layout); and

~~(c)~~ (b) with the approval of the relevant planning authority 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 project development.

#### **Agreements with street authorities**

~~16.13.~~ ~~(1) —~~ (1) A street authority and the undertaker may enter into agreements with respect to —

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

~~(b)~~ under a [insert description of development] authorised the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;

~~(c)~~ (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a;

[insert description of development];

- (d) ~~(e)~~ any ~~stopping up~~, alteration or diversion, prohibition or restriction in the use of a street authorised by this Order; or
  - (e) ~~(f)~~ the carrying out in the street of any of the works referred to in article ~~8(1)~~ 11 (street works) and article 12 (power to alter layout, etc. of streets) and article 15 (access to works).
- (2) ~~(2)~~ Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) ~~(a)~~ make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) ~~(b)~~ include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) ~~(c)~~ contain such terms as to payment and otherwise as the parties consider appropriate.

### Traffic Regulation

17.—(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 13 (temporary prohibition or restriction of use of streets and public rights of way) 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 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 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement)(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.

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

PART 4  
SUPPLEMENTAL POWERS

**Discharge of water**

~~18.14.—(1)~~ (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 ~~project~~ 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)~~ (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) ~~shall~~ is to be determined as if it were a dispute under section 106 of the Water Industry Act ~~1991(a)~~ 1991(a) (right to communicate with public sewers).

~~(3)~~ (3) The undertaker ~~shall~~ 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 ~~shall~~ must not be unreasonably withheld.

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

~~(a)~~ (a) in accordance with plans approved by the person to whom the sewer or drain belongs; but ~~such~~ approval ~~shall~~ must not be unreasonably withheld; and

~~(b)~~ (b) where that person has been given the opportunity to supervise the making of the opening.

~~(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.~~

~~(5)~~ (6) ~~The undertaker shall~~ 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.

~~(6)~~ (7) This article does not authorise ~~the entry into controlled waters of any matter whose entry or any water discharge activities or groundwater activities for which an environmental permit would be required pursuant to regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016(b).~~

~~discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(b) (offences of polluting water).~~

~~(7)~~ (8) In this article—

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

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

**Protective work to buildings**

**Authority to survey and investigate the land**

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

(a) survey or investigate the land;

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(a) 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).

(b) S.I. 2016/1154.

(c) 1964 c.40.

(d) 1991 c.57 as amended by S.I. 2009/3104.

- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
  - (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
  - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required entering the land, produce written evidence of their authority to do so; and
  - (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes are to be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority,  
but such consent must not be unreasonably withheld.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act(a).
- (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.

### Protective work to buildings

20.15.—(1) —(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building ~~lying within the Order limits as the or structure lying within the Order limits as the undertaker considers necessary or expedient.~~

(2) Protective works may be carried out—  
~~undertaker considers necessary or expedient.~~

~~(2) Protective works may be carried out—~~

(a) ~~(a)~~ at any time before or during the ~~carrying out construction of any part of the authorised development~~ in the vicinity of the building ~~of any part of or structure; or~~ development in the vicinity of the building of any part of or structure; or  
~~the authorised project; or~~

(b) ~~(b)~~ after the completion of that part of the authorised ~~project~~ development in the vicinity of the building or structure at any time up to the end of the period of 5 years beginning with the ~~day on which that part~~ date of final commissioning.  
~~of the authorised project is first opened for use.~~

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

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



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

~~(a) (a) enter the building or structure and any land within its curtilage; and~~  
~~(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.~~  
~~(b) 1991 c.57. 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) of Part 1 of Schedule 21 to S.I. 2007/3538.~~  
~~(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.~~  
~~††~~

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

~~(5) (5) Before exercising—~~

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

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

~~(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building, structure or land concerned may, by serving a counter-notice within the period of 7 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building, structure or land to be referred to arbitration under article 42(3) (procedures in relation to certain approvals etc.).~~

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

~~(8) Where—~~

- ~~(a) protective works are carried out to a building or structure under this article; and~~
- ~~(b) within 5 years beginning with the date of final commissioning for that part of the authorised development in the vicinity of the building or structure it appears that the protective works are inadequate to protect the building or structure against damage caused by the construction, operation or maintenance of that part of the authorised development,~~

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

~~(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).~~

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

~~(8) Where—~~

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

~~carrying out or use of that part of the authorised project, the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.~~

~~(9) (9) Nothing in this article shall relieve the undertaker from any liability to pay compensation~~ relieves the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).  
~~under section 10(2) of the 1965 Act (compensation for injurious affection).~~

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

~~(11) 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.~~  
~~dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).~~

~~(12) (11) In this article “protective works” in relation to a building means—~~

~~(a) (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building~~ or structure ~~by the carrying out~~ construction, operation or ~~maintenance or use of the authorised project~~ development; and

~~(b) (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out~~ construction, operation or ~~maintenance or use of the authorised project~~ development.

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

~~16.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project 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.~~

~~12~~

~~(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) shall, if so required entering the land, produce written evidence of their authority to do so; and~~

~~(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.~~

~~(4) No trial holes shall 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 shall not be unreasonably withheld.~~

~~(5) The undertaker shall 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, Part 1 (determination of questions of disputed~~

## Felling or lopping of trees

21.—(1) The undertaker may 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;
- (b) from constituting a danger to persons using the authorised development; or
- (c) from obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

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

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

## **Removal of human remains**

**17.—(1) In this article “the specified land” means ~~[insert description of the land].~~**

## PART 5

### POWERS OF ACQUISITION

~~(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it shall remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.~~

~~(3) Before any such remains are removed from the specified land the undertaker shall give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—~~

~~(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and~~

~~(b) displaying a notice in a conspicuous place on or near to the specified land.~~

~~(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker shall send a copy of the notice to ~~[insert relevant local authority].~~~~

~~(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.~~

~~(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—~~

~~(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or~~

~~(b) removed to, and cremated in, any crematorium;~~

~~and that person shall, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).~~

~~(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question shall be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who shall remove the remains and as to the payment of the costs of the application.~~

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

~~13~~

~~(9) If—~~

~~(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or~~

~~(b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or~~  
~~(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or~~  
~~(d) it is determined that the remains to which any such notice relates cannot be identified;~~  
 subject to paragraph (10) the undertaker shall remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves shall be re-interred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

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

~~(11) On the re-interment or cremation of any remains under this article—~~  
~~(a) a certificate of re-interment or cremation shall be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and~~  
~~(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to [insert relevant local authority] mentioned in paragraph (4).~~

~~(12) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.~~

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

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

### Compulsory acquisition of land

~~22.18.—(1) —(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project [development or to facilitate it, or as is incidental, to it] [or is required as replacement land];~~

~~(2) (2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents (including restrictive covenants) to which it was previously subject.~~

~~(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~

~~(3) (4) This article is subject to article 24 (compulsory acquisition of rights), article 25 (acquisition of land limited to subsoil lying more than 9 metres beneath surface only) and article 28-31 (temporary use of land for carrying out the authorised development).~~

~~project).~~

~~(a) 1857 c.81. There are amendments to this Act which are not relevant to this Order.~~

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### Compulsory acquisition of land — incorporation of the mineral code

~~19. [Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981(a)(minerals) [is/are] incorporated in this Order subject to the modifications that—~~

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

~~(b) for “the acquiring authority” substitute “the undertaker”;~~

~~(c) [insert additional modifications].~~

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

~~23.20.~~ ~~(1)~~ (1) After the end of the period of ~~{5 years}~~ beginning on the day on which this Order ~~is~~ comes into force ~~made~~

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

(b) ~~(b)~~ no declaration ~~shall~~ may be executed under section 4 of the 1981 Act (execution of declaration) as applied by article 28 (application of the Compulsory Purchase (Vesting Declarations) Act 1981 ~~as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)~~ ~~(b)~~.

~~(2)~~ (2) The authority conferred by article ~~28~~ 31 (temporary use of land for carrying out the authorised project ~~development~~) ~~shall~~ must cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph ~~shall prevent~~ 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

~~24.21.~~ ~~(1)~~ (1) Subject to paragraph (2) ~~The~~ the undertaker may acquire compulsorily ~~the existing rights and create and acquire~~ such rights over the Order land or impose such restrictions affecting the land as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 7 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and restrictions over land and the creation and acquisition of such new rights and the impositions of such new restrictions as are specified in column (2) of the table in that Schedule.

~~compulsorily the new rights described in the book of reference and shown on the {insert name} plan.~~

~~(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.~~

~~(3) Subject to section 8 of the 1965 Act, as substituted by article 26 (acquisition of part of~~

(3) certain properties), where the undertaker acquires an existing Subject to section 8 of the 1965 Act (other provisions as to divided land), schedule 2A (counter-notice requiring purchase of land not in notice to treat) (as substituted by paragraph 5(8) of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights)) and section 12 of the 1981 Act (divided land), where the undertaker creates or acquires a right over land under paragraph (1) or (2), the undertaker ~~shall~~ is not ~~be~~ required to acquire a greater interest in that land.

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

### **Private rights of way**

(4) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(5) In any case where the acquisition of new rights under paragraph (1) 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 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 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) 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.

### Acquisition of subsoil only

25.—(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 22 (compulsory acquisition of land) and paragraphs (1) and (2) of article 24 (compulsory acquisition of rights) as may be required for any purpose for which that land or rights over land may be created or acquired under that provision instead of acquiring the whole of the land.

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

(3) 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 1981 Act; 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.

### Private rights

~~26.22.—(1)~~ (1) Subject to the provisions of this article, all private rights ~~of way and restrictions~~ over land subject to compulsory acquisition under this Order ~~shall be~~ are extinguished—

- ~~(a) ~~(a)~~ as from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement;~~ agreement; or
- ~~(b) ~~(b)~~ on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry);~~ or
- ~~(c) on commencement of any activity authorised by the Order which interferes with or breaches those rights.~~

whichever is the ~~earlier~~ earliest.

~~(a) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule 2 was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.~~

~~(b) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.~~

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

(a) as from the date of acquisition of the right or imposition of the restriction by the undertaker, whether compulsorily or by agreement; or  
~~undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes~~

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,  
whichever is the earliest.

(3) ~~(3)~~ Subject to the provisions of this article, all private rights ~~of way over land of which the~~ and restrictions over land owned by the undertaker within the Order land 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 ~~shall be~~ 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) ~~(4)~~ Any person who suffers loss by the extinguishment or suspension of any private right ~~of way or restriction~~ under this ~~article shall be~~ Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) ~~(5)~~ This article does not apply in relation to any right ~~of way or apparatus~~ to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article ~~31~~ 33 (statutory undertakers) applies.

(7) ~~(6)~~ Paragraphs (1) to ~~(3)~~ shall have effect subject to—

(a) ~~(a)~~ any notice given by the undertaker before—

(i) ~~(i)~~ the completion of the acquisition of the land ~~, or the acquisition of rights over land or the creation of rights over land;~~

(ii) ~~(ii)~~ the undertaker's appropriation of it;

(iii) ~~(iii)~~ the undertaker's entry onto it, ~~or;~~ or

(iv) ~~(iv)~~ the undertaker's taking temporary possession of it,

stating that any or all of those paragraphs ~~shall do~~ not apply to any right ~~of way~~ specified in the notice; and

(b) ~~(b)~~ any agreement made at any time between the undertaker and the person in or to whom the right ~~of way or restriction~~ in question is vested or belongs.

(8) ~~(7)~~ If any such agreement as is referred to in paragraph ~~(6)(b)~~ —7(b)—

(a) ~~(a)~~ is made with a person in or to whom the right ~~of way~~ is vested or belongs; and

(b) ~~(b)~~ is expressed to have effect also for the benefit of those deriving title from or under that person,

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

### Power to override easements and other rights

27.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, 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 the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

(a) the erection, construction or maintenance of any part of the authorised development;

- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

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

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
  - (i) the compensation is to be estimated in connection with a purchase under that Act; or
  - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability.

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

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

~~28.23.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) shall apply—(1) The 1981 Act applies~~ as if this Order were a compulsory purchase order.

~~(2) (2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have The 1981 Act, as applied by paragraph (1), has~~ effect with the following modifications.

~~(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—  
“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—~~

~~(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and~~

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

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~~(b) published in a local newspaper circulating in the area in which the land is situated.~~

”

~~(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.~~

~~(5) In that section, for subsections (5) and (6) there shall be substituted—~~

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

~~(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or~~

~~(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.~~

~~(3) (6) In section 5 In section 5(2) (earliest date for execution of declaration)—declaration), omit the words from “, and this subsection” to the end.~~



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

~~(4) (b) subsection (2) shall be~~ Section 5A (time limit for general vesting declaration) is omitted.

(5) 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 23 (time limit for exercise of authority to acquire land compulsorily) of the Riverside Energy Park Order 202\*”.

(6) 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”.

(7) (7) 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)” shall be omitted.

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

“(2) But see article 25 (acquisition of subsoil only) of the Riverside Energy Park Order 202\*, which excludes the acquisition of subsoil only from this Schedule”.

~~(9) (8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall 1981 Act must be construed as references to that Act as applied by section 125 of the 2008 Act (and as modified by article 29 (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) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.~~

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

~~(3) Paragraph (2) shall not prevent article 26 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.~~

#### **Acquisition of land limited to subsoil lying more than 9 metres beneath surface**

~~25.—(1) This article applies to the land specified in Schedule F (land of which only subsoil more than 9 metres beneath surface may be acquired).~~

~~(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 18 (compulsory acquisition of land) so much of, or such rights in, the subsoil of the land as may be required for the purposes of the authorised project.~~

~~(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, the undertaker shall not be required to acquire a greater interest in the land or an interest in any other part of it.~~

~~(4) References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose “level of the surface of the land” means—~~

~~(a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;~~

~~(b) in the case of a watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or~~

~~(c) in any other case, ground surface level.~~

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

~~26.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—~~

~~(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land~~

~~consisting of a house with a park or garden (“the land subject to the notice to treat”); and  
(b) a copy of this article is served on the owner with the notice to treat.  
(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).  
(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.  
(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.  
(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—  
(a) without material detriment to the remainder of the land subject to the counter-notice; or  
(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the owner shall be required to sell the land subject to the notice to treat.  
(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—  
(a) without material detriment to the remainder of the land subject to the counter-notice; or  
(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.  
(7) If on such a reference the tribunal determines that—  
(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but  
(b) the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.  
(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—  
(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and  
(b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.  
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(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.  
(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.~~

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

29.—(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 23 (time limit for exercise of authority to acquire land compulsorily) of the Riverside Energy Park Order 202\*”.

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

(a) in subsection (1)(a) after “land” insert “under that provision”; and

(b) in subsection (2) after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 23 (time limit for exercise of authority to acquire land compulsorily) of the Riverside Energy Park Order 202\*”.

(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 25(3) (acquisition of subsoil only) of the Riverside Energy Park Order 202\*, which excludes the acquisition of subsoil only from this Schedule”

(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 31 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) or article 20 (protective work to buildings) of the Riverside Energy Park Order 202\*”.

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

30.27.—(1) —(1) The undertaker may enter ~~on~~ 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 ~~project~~ development and may use the subsoil or air-space for those purposes or any other purpose ancillary to ~~the authorised project~~ the authorised development.

(2) ~~(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) ~~(3)~~ Paragraph (2) ~~shall~~ is not ~~to~~ apply in relation to—

(a) ~~(a)~~ any subway or underground building; or

(b) ~~(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) ~~(4)~~ Subject to paragraph (5), any person who is an owner or occupier of land ~~appropriated under~~ 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 ~~as a result~~ by the exercise of that power, ~~shall~~ is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

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

~~31.28. (1)~~ (1) The undertaker may, in connection with the carrying out of the authorised ~~project~~ development

~~(a)~~ (a) enter on and take ~~temporary~~ possession of—

(i) so much of the land specified in columns (1) and (2) of the table in Schedule ~~G-9~~ (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of the table in that Schedule ~~relating to the part of the authorised;~~

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

~~project specified in column (4) of that Schedule;~~

~~(b)~~ (b) remove any buildings, ~~fences, debris~~ and vegetation from that land; ~~and~~

~~(c)~~ (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 the table in Schedule 9 (land of which temporary possession may be taken), or any mitigation works.

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

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

(a) article 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 completion of the part date of final commissioning of the authorised project specified in relation to that land in column development; or

(b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

~~(4) of Schedule G.~~

~~(4)~~ (4) ~~Before~~ Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act 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, ~~the undertaker shall~~ remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker ~~shall is~~ not to be required to replace a building or any debris removed under this article.  
~~removed under this article.~~

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~~(5)~~ (5) The undertaker ~~shall~~ must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of ~~any power conferred by~~ this article.

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

~~(7)~~ (7) Nothing in this article ~~shall affect~~ affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised

project development, other than loss or damage for which compensation is payable under paragraph (5).

~~(8)~~ ~~(8)~~—The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) ~~except that (a)(i).~~

(9) Nothing in this article precludes the undertaker ~~shall not be precluded~~ from—

(a) ~~(a) creating and~~ acquiring new rights over any part of ~~that land the Order land identified in Schedule 7 (land in which only new rights etc. may be acquired)~~ under article ~~21–24~~ (compulsory acquisition of rights); or

(b) ~~(b) acquiring any right in the subsoil of any~~ part of the ~~subsoil (or rights in the subsoil) of that Order~~ land under article ~~24–25~~ (acquisition of subsoil only) or ~~in accordance with article 25–30 (acquisition of land limited rights under or over streets).~~  
~~to subsoil lying more than 9 metres beneath surface).~~

~~(10)~~ ~~(9)~~—Where the undertaker takes possession of land under this article, the undertaker ~~shall is~~ not ~~to~~ be required to acquire the land or any interest in it.

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

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

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

~~32.29.~~ ~~(1)~~ —(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project development, the undertaker may—

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

(b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

~~and~~

(c) ~~(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)~~ ~~(2)~~—Paragraph (1) ~~shall does~~ not authorise the undertaker to take temporary possession of—

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

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

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

~~(4)~~ ~~(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 project development for which possession of the land was taken.

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

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

~~(8)~~ (8) Nothing in this article ~~shall affect~~ affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other ~~20~~enactment in respect of loss or damage arising from the maintenance of the authorised ~~project~~development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

~~(11)~~ (11) In this article “the maintenance period” ~~is, in relation to any part of the authorised project,~~ means the period of 5 years beginning with the date ~~on which that part of the authorised project is~~ of final commissioning, ~~first opened for use.~~

### **Special category land**

~~30.~~ (1) The special category land ~~shall not vest in the undertaker until the undertaker has acquired the replacement land and [insert name of relevant body] has certified that a scheme for the provision of the replacement land as [common/open space/fuel or field garden allotment] has been implemented to its satisfaction.~~

~~(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in [insert name of relevant body] subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3) In this article—~~

~~“the special category land” means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled “Special Category Land Plan” attached to the land plan, which may be acquired compulsorily under this Order and for which replacement land is to be provided; and~~

~~“the replacement land” means the land identified in the book of reference and on the plan entitled “Replacement Land Plan” attached to the land plan.~~

### **Statutory undertakers**

~~33.~~ ~~31.~~ The Subject to the provisions of Schedule 10 (protective provisions), the undertaker may—

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

~~(b)~~ (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers ~~shown on the [insert name] plan and described in the book of reference~~ on, under, over or within the Order land; and

~~(c)~~ (c) create and acquire compulsorily the ~~new rights,~~ or impose restrictions, over any Order land belonging to statutory undertakers ~~shown~~ on the [insert name] plan and described in the book of reference.

### **Apparatus and rights of statutory undertakers in stopped ~~up streets~~ up streets**

#### 34.

~~32.~~ (1) Where a street is stopped up under article 9 (stopping up of streets), any statutory

~~utility~~ Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 11 (street works), article 12 (power to alter layout, etc. of streets), or article 13 (prohibition or restriction of use of streets and public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street shall is to have the same powers and rights in respect of that apparatus, subject to ~~the provisions of this article~~ Schedule 10 (protective provisions), as if this Order had not been made.

~~(2) Where a street is stopped up under article 9, any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—~~

~~(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it;~~

~~or~~

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~~(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).~~

~~(3) Subject to the following provisions of this article, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—~~

~~(a) the execution of the relocation works required in consequence of the stopping up of the street; and~~

~~(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.~~

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

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

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

~~(5) For the purposes of paragraph (4) —~~

~~(a) an extension of apparatus to a length greater than the length of existing apparatus 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 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.~~

~~(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) 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 the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.~~

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

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

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

~~(8) In this article —~~

~~“apparatus” has the same meaning as in Part 3 of the 1991 Act;~~

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

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

~~(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.~~

~~22~~

## Recovery of costs of new connections

~~35.33.~~ ~~(1)~~ ~~—(1)~~ Where any apparatus of a public utility undertaker or of a public communications provider is removed under article ~~31~~ 33 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus ~~shall~~ 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)~~ ~~(2)~~ Paragraph (1) ~~shall~~ does not apply in the case of the removal of a public sewer but where such a sewer is removed under article ~~31~~ 33 (statutory undertakers) any person who is—

~~(a)~~ ~~(a)~~ the owner or occupier of premises the drains of which communicated with ~~that~~ the sewer; or

~~(b)~~ ~~(b)~~ the owner of a private sewer which communicated with that sewer,

shall 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)~~ ~~(3)~~ This article ~~shall~~ does not have effect in relation to apparatus to which article ~~32~~ 34 (apparatus and rights of statutory undertakers in ~~stopped-up~~ streets) or Part 3 of the 1991 Act applies.

~~(4)~~ ~~(4)~~ In this ~~paragraph~~ article—

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

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

## **Railway and navigation undertakings**

~~34.~~ ~~(1)~~ Subject to the following provisions of this article, the undertaker may not under article 8 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

~~(a)~~ is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or

~~(b)~~ forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person;

~~except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.~~

~~(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.~~

~~(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.~~

~~(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.~~

## PART 6

### MISCELLANEOUS AND GENERAL

#### Application of landlord and tenant law

~~36.35.~~ ~~(1)~~ ~~—(1)~~ This article applies to—

~~(a)~~ ~~(a)~~ any agreement for leasing to any person the whole or any part of the authorised ~~project~~ development or the right to operate the same; and

---

~~(a)~~ 2003 c.21. Section 151(1) was amended by paragraphs 90(a)(i), (ii), (iii), 90(b), 90(c) and 90(d) of Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations 2011/1210.



~~(b)~~ ~~(b)~~ any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised ~~project~~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.

~~23~~

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

~~(3)~~ ~~(3)~~ Accordingly, no such enactment or rule of law ~~shall apply~~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)~~ ~~(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)~~ ~~(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)~~ ~~(c)~~ restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

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

~~37.36.~~ Development consent granted by this Order ~~shall is to~~ be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land).

~~operational land for the purposes of that Act).~~

#### **Deemed consent under section 34 of the Coast Protection Act 1949**

~~37. The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949(a) to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.~~

#### **Deemed licence under Part 2 of the Food and Environment Protection Act 1985**

~~38. The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985(b) to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.~~

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

~~39.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, 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 project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised project.~~

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

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

~~(a) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other amendments to the 1949 Act which are not relevant to this Order.~~

~~(b) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this Order.~~

~~24~~

#### **Trees subject to tree preservation orders**

~~40.—(1) The undertaker may fell or lop any tree described in Schedule J [and identified on the *insert name*] plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—~~

~~(a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised project.~~

- ~~(2) In carrying out any activity authorised by paragraph (1) —~~  
~~(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and~~  
~~(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.~~  
~~(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.~~  
~~(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.~~  
**Certification of plans etc**

### Defence to proceedings in respect of statutory nuisance

38.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraphs (c), (d), (e), (fb), (g) or (h) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance 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

39. Schedule 10 (protective provisions) has effect.

### Certification of plans etc.

~~40.41.—(1) The undertaker shall—~~(1) The undertaker must, as soon as practicable after the making of this Order, submit to ~~the decision-maker copies of—~~  
~~(a) the book of reference;~~  
~~(b) the land plan;~~  
~~(c) the rights plan;~~  
~~(d) the works plan;~~

---

(a) 1990 c.43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16). Section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.  
(b) 1974 c.40. Sections 61(9) was amended by paragraph 1 of Schedule 24 to the Environment Act 1995 and by section 162(1) and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

~~(e) the sections; and the Secretary of State copies of all documents and plans referred to in Schedule 11 (documents and plans to be certified) to this Order (f) any other plans or documents referred to in this Order,~~ for certification that they are true copies of the documents referred to in this Order.

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

#### **Arbitration**

~~42. Any difference under any provision of this Order, unless otherwise provided for, shall 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 [insert appropriate body].~~

### **Schedule A**

#### **AUTHORISED PROJECT**

##### **Part 1**

##### **AUTHORISED DEVELOPMENT**

~~[NOTE: This Part should describe as fully as possible the elements of the proposed project (including any associated development), which are development for the purposes of section 32 of the 2008 Act, for which development consent is sought. It should not include any elements of development which would be authorised by specific provisions in the Order.]~~

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##### **Part 2**

##### **ANCILLARY WORKS**

~~[NOTE: This Part should describe as fully as possible the ancillary works for which consent is sought and which are not development within the meaning of section 32 of the 2008 Act and which would not be the subject of a separate provision [article] in this Order.]~~

### **Schedule B**

#### **STREETS SUBJECT TO STREET WORKS**

~~(1) (2)~~

~~Area Street subject to street works~~

### **Schedule C**

#### **STREETS TO BE STOPPED UP**

##### **Part 1**

##### **STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED**

~~(1) (2) (3) (4)~~

~~Area Street to be stopped~~

~~up~~

~~Extent of stopping up New street to be substituted~~

##### **Part 2**

##### **STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED**

~~(1) (2) (3)~~

~~Area Street to be stopped up Extent of stopping up~~

### **Schedule D**

#### **STREETS TO BE TEMPORARILY STOPPED UP**

~~(1) (2) (3)~~

~~Area Street to be temporarily stopped up~~

~~Extent of temporary stopping up~~

### **Schedule E**

#### **ACCESS TO WORKS**

~~(1) (2)~~

~~Area Description of access~~

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### **Schedule F**

~~LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH  
SURFACE MAY BE ACQUIRED~~

~~(1)(2)~~

~~Area Number of land shown on land plan~~

~~Schedule G~~

~~LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN~~

~~(1)(2)(3)(4)~~

~~Area Number of land shown~~

~~on land plan~~

~~Purpose for which~~

~~temporary possession~~

~~may be taken~~

~~Relevant part of the~~

~~Authorised project~~

~~Schedule H~~

~~DEEMED CONSENT UNDER COAST PROTECTION ACT 1949~~

~~{Insert details of deemed consent}~~

~~Schedule I~~

~~DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION  
ACT 1985~~

~~{Insert details of deemed licence}~~

~~Schedule J~~

~~TREES SUBJECT TO TREE PRESERVATION ORDERS~~

~~(1)(2)(3)~~

~~Type of tree Number[reference] of tree~~

~~shown on land plan~~

~~Work to be carried out~~

~~SCHEDULE 2 Article 2~~

~~Model provisions for railways~~

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## Schedule A

### ~~AUTHORISED PROJECT~~

#### ~~Part 1~~

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#### ~~ANCILLARY WORKS~~

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## Schedule C

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## Schedule D

### ~~STREETS TO BE TEMPORARILY STOPPED UP~~

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### ~~ACCESS TO WORKS~~

~~Schedule F~~

~~LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH  
SURFACE  
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~~Schedule K~~

~~LEVEL CROSSINGS~~

~~Schedule L~~

~~PROTECTIVE PROVISIONS~~

~~Preliminary~~

~~Interpretation~~

~~1.—(1) In this Order—~~

~~“the 1961 Act” means the Land Compensation Act 1961(a);~~

~~“the 1965 Act” means the Compulsory Purchase Act 1965(b);~~

~~(a) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1980 Act which are not relevant to this Order.~~

~~(b) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.~~

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~~“the 1980 Act” means the Highways Act 1980(a);~~

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

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

~~“the 2008 Act” means the Planning Act 2008(d);~~

~~“ancillary works” means the ancillary works described in Part 2 of Schedule A (authorised project) [and any other works authorised by the Order] and which are not development within the meaning of section 32 of the 2008 Act;~~

~~“authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;~~

~~“the authorised project” means the authorised development and the ancillary works authorised by this Order;~~

~~“the book of reference” means the book of reference certified by the decision-maker 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;~~

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

~~“the decision-maker” has the same meaning as in section 103 of the 2008 Act;~~

~~“highway” and “highway authority” have the same meaning as in the 1980 Act;  
“the land plan” means the plan certified as the land plan by the decision maker for the purposes of this Order;~~

~~“limits of deviation” means the limits of deviation referred to in article 6;~~

~~“maintain” and any of its derivatives include to inspect, repair, adjust, alter, remove, reconstruct or replace the authorised project and any derivative of “maintain” shall be construed accordingly;~~

~~“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;~~

~~“the Order limits” means the limits shown on the works plan within which the authorised project may be carried out;~~

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

~~(a) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47 (a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.~~

~~(b) 1990 c.8. Section 206(1) was amended by section 192(8) to, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a),(c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.~~

~~(c) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).~~

~~(d) 2008 c.29.~~

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

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~~“relevant planning authority” means —~~

~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii) a National Park Authority;~~

~~(iii) the Broads Authority; and~~

~~(iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~

~~“rights plan” means the plan certified as the rights plan by the decision maker for the purposes of this Order;~~

~~“the sections” means the sections shown on the plan certified as the section drawings plan by the decision maker for the purposes of this Order;~~

~~“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;~~

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

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

~~“tree preservation order” has the meaning given in section 198 of the 1990 Act;~~

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

~~“undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act;~~

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

~~“the works plan” means the plan certified as the works plan by the decision maker for the purposes of this Order.~~

~~(2) References in this Order to rights over land include references to rights to do, or to place and~~

maintain, anything in, on or under land or in the air space above its surface.

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

### **Incorporation of the Railway Clauses Acts**

~~2.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(a) shall be incorporated in this Order—~~

~~section 46 (crossing of roads—level crossings), subject to paragraph (4) and article 18 (level crossings);~~

~~section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;~~

~~section 61 (company to make sufficient approaches and fences to highways crossing on the level);~~

~~section 68 (accommodation works by company);~~

~~(a) 1845 c. 20. Section 46 was amended by sections 109(1) and (3) of, and paragraph 22 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c.39). Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c.101). Section 78 was amended by section 39(3) of, and Schedule 7 to, the Compulsory Purchase Act 1968 (c.56) and articles 5(1) and (2) of, and paras 1 and 3 of Schedule 7 to, S.I. 2009/1307. Section 105 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c.101), and section 31(6) of the Criminal Law Act 1977 (c.45), and sections 37 and 49 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1845 Act not relevant to this Order.~~

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~~section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;~~

~~sections 72 and 73 (supplementary provisions relating to accommodation works);~~

~~section 77 (presumption that minerals excepted from acquisition of land);~~

~~sections 78 to 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(a); and~~

~~section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”.~~

~~(2) The following provisions of the Railways Clauses Act 1863(b) shall be incorporated in this Order—~~

~~sections 5 and 7 (level crossings); and~~

~~section 12 (signals, watchmen etc.);~~

~~(3) In those provisions, as incorporated in this Order—~~

~~“the company” means the undertaker;~~

~~“goods” includes any thing conveyed on the railway authorised to be constructed by this Order;~~

~~“lease” includes an agreement for a lease;~~

~~“prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;~~

~~“the railway” means any railway authorised to be constructed by this Order and any other authorised development; and~~

~~“the special Act” means this Order.~~

~~(4) In section 46 of the Railways Clauses Consolidation Act 1845, as incorporated in this Order, for the proviso there shall be substituted “Provided always that, with the consent of the highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level.”.~~

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

~~3.—(1) Subject to the modifications set out in paragraph (2) [the following provisions of] the [insert short title of the relevant Act] shall be incorporated in this Order—~~

~~(a) section X [specify relevant section(s)]; and~~

~~(b) section X [specify relevant section(s)].~~

~~(4) The provisions of the [insert relevant Act] Act [date] as incorporated in this Order shall be modified as follows [insert relevant modifications].~~

~~(5) In construing the [insert relevant Act] Act [date] as incorporated the following expressions shall have the following meanings [insert relevant expressions and definitions].~~



## Principal powers

### Development consent etc. granted by the Order

~~4. Subject to the provisions of this Order and to the requirements in the Schedule (requirements) attached to this Order the undertaker is granted—~~

~~(a) 1923 c. 20. Section 15 was amended by section 10(1) of the Decimal Currency Act 1969 (c.19);~~

~~(b) 1863 c. 92.~~

~~33~~

### Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

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

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

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

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

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

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

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(a) 1978 c.30.

- (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.

**Procedures in relation to certain approvals etc.**

42.—(1) Subject to paragraph (2), Schedule 12 is to have effect in relation to all consents, agreements or approvals contemplated by any provisions of this Order.

(2) Schedule 12 does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 10 (protective provisions) or any dispute under article 20(6) (protective work to buildings) to which the following paragraphs apply.

(3) Any difference or dispute arising under any provision of Schedule 10 (protective provisions) or article 20(6) (protective work to buildings) must, unless otherwise agreed in writing between the undertaker and the party in question, be referred to and settled in arbitration in accordance with the arbitration rules in Schedule 13 (arbitration rules), 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.

(4) If the Secretary of State fails to appoint an arbitrator under paragraph (3) within 14 days of the application, the referring party may refer to the Centre of Effective Dispute Resolution for appointment of an arbitrator.

(5) Schedule 13 (arbitration rules) has effect.

**No double recovery**

43. Compensation is not payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law.

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

Address \_\_\_\_\_ Title \_\_\_\_\_

Date \_\_\_\_\_ Department for Business, Energy and Industrial Strategy

# SCHEDULES

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in section 14(1)(a) and section 15 of the 2008 Act being a generating station with a capacity of over 50 megawatts but below 300 megawatts and associated development under section 115(1) of the 2008 Act comprising all or part of—

#### In the London Borough of Bexley

##### Work No. 1 — Works to construct an integrated energy park—

- (a) Work No. 1A — an energy recovery facility including—
  - (i) fuel reception and storage facilities consisting of a tipping hall and vehicle ramp(s), shredder, solid fuel storage bunker, cranes and handling equipment;
  - (ii) waste processing lines, each line including a feed hopper, ram feed, air cooled moving grates, a boiler and steam systems, combustion air systems and flue gas treatment facilities including residue and reagent storage silos and tanks;
  - (iii) associated induced fans and emissions control monitoring systems;
  - (iv) up to two emission stacks;
  - (v) a steam turbine and electrical generator (if not constructed and installed as part of Work No. 2);
  - (vi) an integrated protection system and uninterruptable power supplies; and
  - (vii) bottom ash conveyors, including storage bunker, crane and ash collection bay.
- (b) Work No. 1B — an anaerobic digestion system including—
  - (i) fuel reception and storage facilities as constructed for Work Number 1A;
  - (ii) conveyor and feed system;
  - (iii) anaerobic digester, dryers and integrated heating system;
  - (iv) solid digestate treatment equipment, handling and storage;
  - (v) ventilation and air collection system;
  - (vi) emission stack;
  - (vii) gas flare;
  - (viii) combined heat and power plant, including combined heat and power engine;
  - (ix) an electrical switchyard, including switchgear and transformer;
  - (x) gas storage and upgrading equipment; and
  - (xi) associated gas and process heat pipes.
- (c) Work No. 1C — solar photovoltaic panels on all or part of Work No. 1E and, should a steam turbine building be constructed as part of Work No. 2, on all or part of the steam turbine building forming part of Work No. 2, on all or part of the steam turbine building forming part of Work No. 2, switchgear, inverters, transformers and permanent equipment for maintenance.
- (d) Work No. 1D — a battery storage facility including—
  - (i) battery energy storage cells;
  - (ii) transformers;
  - (iii) protection cabinets; and
  - (iv) switch gear and ancillary equipment.

- (e) Work No. 1E — a building with roof enclosing and/or supporting all or part of Work Nos. 1A, 1B, 1C and 1D.

**Work No. 2 — Works to construct—**

- (a) A cooling system comprising air-cooled condensers; and
- (b) If not constructed and installed as part of Work No. 1A, a steam turbine and electrical generator and a steam turbine building to house all or part of the same.

**Work No. 3 — Works to construct and install combined heat and power equipment including heat exchangers, pipework (including flow/return pipework, valving, pumps, pressurisation and water treatment systems).**

**Work No.4 — Works to construct an electrical substation including switchgear, and transformer, busbar sections, integrated protection scheme and uninterruptable power supplies.**

**Work No. 5 — Works to construct or install supporting buildings and facilities, including—**

- (a) diesel storage tanks;
- (b) a process effluent storage tank;
- (c) a demineralised water treatment plant;
- (d) fire water tank, pump room(s) and fire protection facilities;
- (e) a control room;
- (f) administration block(s);
- (g) a fully integrated distributed control system;
- (h) workshop(s) and associated stores;
- (i) spare parts storage facilities;
- (j) security gatehouses and barriers;
- (k) weighbridges;
- (l) a heavy goods vehicle holding area;
- (m) an external fuel container storage area;
- (n) emergency stand-by generator(s);
- (o) infrastructure for the transmission and/or storage of compressed natural gas;
- (p) an outage contractor compound; and
- (q) a permanent contractor laydown area.

**Work No. 6 — Works to construct and install supporting infrastructure, including—**

- (a) pipework (including flow/return pipework), cables, telecommunications, other services and associated infrastructure;
- (b) site drainage, waste management, water, wastewater, other services and associated infrastructure;
- (c) new or alteration to accesses, a vehicular access road and internal vehicular access road, vehicle turning, waiting and parking areas; and
- (d) vehicle parking.

**Work No. 7 — Works to construct and install from Work No. 6 pipes and cables.**

**Work No. 8 — Works to construct temporary construction compound including—**

- (a) hard standing;
- (b) vehicle parking;
- (c) accommodation block(s);
- (d) new or alteration to accesses; and

- (e) construction fabrication areas.

### **In the London Borough of Bexley and the Borough of Dartford**

**Work No. 9** — Works to construct and install an electrical connection including—

- (a) 132kV electrical underground and overground cables and associated telemetry and electrical cabling;
- (b) cable trenches, ducting and jointing pits;
- (c) above ground cable trough structures which are either freestanding or attached to highway structures;
- (d) temporary construction compounds; and
- (e) new or alteration to accesses.

### **In the Borough of Dartford**

**Work No. 10** — Works to connect the electrical connection (Work No. 9) to the Littlebrook substation and associated improvements.

In connection with and in addition to Work Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 and to the extent that it does not otherwise form part of those Work Nos., further associated development within the Order limits including—

- (a) external lighting infrastructure, including perimeter lighting columns;
- (b) fencing, boundary treatment and other means of enclosure;
- (c) demolition of existing buildings and structures;
- (d) signage;
- (e) CCTV and other security measures;
- (f) surface and foul water drainage facilities;
- (g) potable water supply;
- (h) new telecommunications and utilities apparatus and connections;
- (i) hard and soft landscaping;
- (j) biodiversity enhancement measures and environmental mitigation measures;
- (k) works to permanently alter the position of existing telecommunications and utilities apparatus and connections;
- (l) works for the protection of buildings and land; and
- (m) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections,

and such other buildings, structures, works or operations and modifications to, or demolition of, any existing buildings, structures or works 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 1 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.

REQUIREMENTS

Time limits

1. The authorised development must not commence after the expiry of five years of the date on which this Order comes into force.

Detailed design approval

2.—(1) No part of Work No. 1A(iv), Work No. 1B(iv), Work No. 1C, Work No. 1E, Work No.2, Work No.3, Work No. 4, Work No. 5 and Work No. 6 may commence until details of the layout, scale and external appearance for that Work No. have been submitted to and approved by the relevant planning authority.

(2) The details submitted for approval under sub-paragraph (1) must be in accordance with the design principles.

(3) The authorised development must be carried out in accordance with the approved details.

Parameters of authorised development

3.—(1) The elements of the authorised development listed in column (1) of the table below (design parameters) must not exceed the maximum dimensions and levels and, where applicable, the minimum dimensions, set out in relation to that element in columns (3) to (7) of that table.

Table 1

<u>(1)</u> <u>Element of</u> <u>authorised</u> <u>development</u>	<u>(2)</u> <u>Work No.</u>	<u>(3)</u> <u>Maximum</u> <u>length</u> <u>(metres)</u>	<u>(4)</u> <u>Maximum</u> <u>width</u> <u>(metres)</u>	<u>(5)</u> <u>Maximum</u> <u>height</u> <u>(metres)</u> <u>AOD</u>	<u>(6)</u> <u>Minimum</u> <u>height</u> <u>(metres)</u> <u>above</u> <u>surrounding</u> <u>ground level</u>	<u>(7)</u> <u>Maximum</u> <u>depth</u> <u>(metres)</u> <u>below</u> <u>AOD</u>
<u>Main</u> <u>Riverside</u> <u>Energy Park</u> <u>Building</u>	<u>1A</u> <u>(excluding</u> <u>Work</u> <u>No.1A(iv),</u> <u>1C and 1E</u>	<u>200</u>	<u>102</u>	<u>65</u>	<u>=</u>	<u>=</u>
<u>Solid fuel</u> <u>storage</u> <u>bunker</u>	<u>Part of</u> <u>Work No.</u> <u>1A(i)</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>8</u>
<u>Anaerobic</u> <u>digestion</u> <u>system</u>	<u>1B</u> <u>(excluding</u> <u>Work No.</u> <u>1B(vi) and</u> <u>Work No.</u> <u>1B(vii)</u>	<u>87</u>	<u>68</u>	<u>43</u>	<u>=</u>	<u>=</u>
<u>Other</u> <u>integral</u> <u>process</u> <u>buildings</u> <u>and</u> <u>structures</u>	<u>1D, 2(b), 3,</u> <u>4, 5, 6 and</u> <u>7</u>	<u>111</u>	<u>116</u>	<u>38</u>	<u>=</u>	<u>=</u>
<u>Emissions</u> <u>stacks(s)</u>	<u>1A(iv)</u>	<u>=</u>	<u>46</u>	<u>113</u>	<u>90</u>	<u>=</u>

Emission stack	1B(vi)			11	4	
Gas Flare	1B(vii)			17	4	

(2) The above surrounding ground level in respect of Work No. 1 must comply with the following parameters: a minimum level of 1 metre AOD and maximum level of 3m AOD.

#### Pre-commencement biodiversity and landscape mitigation strategy

4.—(1) No part of the pre-commencement works may be carried out until a pre-commencement biodiversity and landscape mitigation strategy has been submitted to and approved by the relevant planning authority.

(2) The pre-commencement biodiversity and landscape mitigation strategy submitted pursuant to sub-paragraph (1) must contain—

- (a) details of mitigation measures required to protect protected habitats and species during the pre-commencement works;
- (b) the off-setting value of the habitats affected as a result of the pre-commencement works, such off-setting value to be subsequently combined with the off-setting value identified for other habitat losses following detailed design and which is to be set out in the biodiversity and landscape mitigation strategy submitted under requirement 5; and
- (c) should the undertaker not commence the authorised development and the biodiversity and landscape mitigation strategy is not implemented under requirement 5(2), details of how the land the subject of the pre-commencement biodiversity and landscape mitigation strategy is to be restored and the timetable for such restoration.

(3) The pre-commencement biodiversity and landscape mitigation strategy must be implemented as approved under sub-paragraph (1).

#### Biodiversity and landscape mitigation strategy

5.—(1) No part of the authorised development may commence until a biodiversity and landscape mitigation strategy for that part has been submitted to and approved by the relevant planning authority. The biodiversity and landscape mitigation strategy must be substantially in accordance with the outline biodiversity and landscape mitigation strategy and include details of—

- (a) ~~(a) development consent for~~ mitigation measures required to protect protected habitats and species during the construction of the authorised development; and

(b) consent for the ancillary works, to be carried out within the Order limits.

#### **Maintenance of authorised project**

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

#### **Limits of Deviation**

**6.** In carrying out linear works the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plan to the extent of the limits of deviation shown on that plan; and
- (b) deviate vertically from the levels of the authorised development shown on the sections—
  - (i) to any extent not exceeding *[insert number]* metres upwards; or
  - (ii) to any extent downwards as may be found to be necessary or convenient.

#### **Benefit of Order**

**7.** Subject to article 8 (consent to transfer benefit of Order), the provisions of articles *[ ]* and *[ ]* *[specify relevant articles]* shall have effect solely for the benefit of *[specify person, body or class of person]*.

*[NOTE: This article is required where provisions of the Order are specific to a named undertaker or class of undertaker (see section 156(2) of the 2008 Act).]*

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

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

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
  - (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.
- (2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.
- (3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

## Streets

### Street works

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;

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- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

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

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

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

*[NOTE: This article should not be used for the purposes of authorising street works that affect a trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets subject to street works). For any street works affecting a trunk road the undertaker should make an application for a licence under section 50 of the 1991 Act.]*

### Construction and maintenance of new or altered streets

10.—(1) Any street (other than *[insert relevant private streets]*) to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed with the highway authority, shall be maintained by and at the expense of the undertaker for a period of *[12 months]* from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of the undertaker for a period of *[12 months]* from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of the undertaker.

(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 shall be 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), the court shall in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;



~~(c) the state of repair in which a reasonable person would have expected to find the street;~~  
~~(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;~~  
~~(e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed;~~  
but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.  
~~(6) Nothing in this article shall—~~  
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- (b) ~~(a) prejudice mitigation measures required to protect protected habitats and species during the operation of section 87 of the 1991 Act (prospectively maintainable~~ the authorised development;
- (c) the results of the Defra biodiversity off-setting metric together with the off-setting value required and the nature of such off-setting;
- (d) the mechanism for securing the off-setting value and (where appropriate and necessary) any long term management and monitoring commitments in respect of the off-setting; and
- (e) any hard and soft landscaping to be incorporated within Work Nos. 1, 2, 3, 4, 5 and 6 including location, number, species, size of any planting and the management and maintenance regime for such landscaping.

(2) The biodiversity and landscape mitigation strategy must be implemented as approved under sub-paragraph (1).

### **Replacement planting for Work No. 9**

6.—(1) No part of Work No. 9 may commence until details—

- (a) of any trees, shrubs and hedgerows to be removed during the construction of Work No. 9; and
- (b) of planting to replace any such identified trees, shrubs and hedgerows,

have been submitted to and approved by the relevant planning authority.

(2) The replacement planting must be carried out in accordance with the approved details and maintained for a period of 12 months.

(3) Any tree, shrub or hedgerow planted as part of the approved details that, within the 12 month maintenance period, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

### **Archaeology**

7.—(1) No part of Work Nos. 1, 2, 3, 4, 5 and 9 may commence until a written scheme of archaeological investigation for that part has been submitted to and approved by the relevant planning authority.

(2) The scheme must—

- (a) identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified;
- (b) provide details of the measures to be taken to protect, record or preserve any significant archaeological features that may be found; and

- (c) identify any areas within the administrative area of Kent County Council where a phased programme of geoarchaeological works and a phased programme of archaeological works are required.
- (3) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—
  - (a) in accordance with the approved scheme; and
  - (b) by a suitably qualified person or organisation.

### **Highway access**

- 8.—(1) No part of Work Nos. 6, 8, 9 and 10 may commence until written details of the siting, design and layout of any new permanent or temporary means of access to a highway in that part, or any alteration to an existing means of access to a highway in that part has been submitted to and approved by the relevant planning authority (in consultation with the relevant highway authority).
- (2) The highway accesses must be constructed or altered in accordance with the approved details.
- (3) The undertaker must not exercise the power in Article 14(1) (permanent stopping up of streets) unless and until a plan showing the layout for the termination of the street (as specified in columns (1) and (2) of Schedule 6) has been submitted to and approved by the relevant planning authority, such plan to show the replacement turning head to facilitate a forward side–turn manoeuvre in forward and reverse gears by vehicles.

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

- 9.—(1) No part of Work Nos. 1, 2, 3, 4, 5, and 6 may commence until written details of the surface and foul water drainage strategy for that part have been submitted to and approved by the relevant planning authority. The written details submitted for approval must be substantially in accordance with the outline drainage strategy.
- (2) The surface and foul water drainage system must be constructed in accordance with the approved details.

### **Ground conditions and ground stability**

- 10.—(1) No part of Work Nos. 1, 2, 3, 4, 5, 6, 7 and 8 may commence until an investigation and assessment report to identify ground conditions and ground stability has been submitted to and approved by the relevant planning authority.
- (2) The report submitted pursuant to sub-paragraph (1) must 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) In the event that the report submitted pursuant to sub-paragraph (1) identifies necessary remedial measures, no part of Work Nos. 1, 2, 3, 4, 5, 6, 7 and 8 may commence until a remediation verification plan for that part has been submitted to and approved by the relevant planning authority.
- (4) The authorised development must be carried out in accordance with the approved report.

### **Code of construction practice**

- 11.—(1) No part of the pre-commencement works may be carried out and no part of the authorised development may commence until a code of construction practice for that part has been submitted to and approved by the relevant planning authority. The code of construction practice submitted for approval must be substantially in accordance with the outline code of construction practice to the extent that it is applicable to that part and must include the following—
- (a) the construction and phasing programme;
  - (b) liaison procedures;

- (c) complaints procedures;
  - (d) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, wheel washing, damping of stockpiles, sheeting materials, lighting, noise and vibration);
  - (e) reference to undertaking construction activities in accordance with the recommendations of BS 5228 'Noise and Vibration Control on Construction Open Sites' Part 1 Noise and Part 2 Vibration;
  - (f) construction waste management;
  - (g) measures for the maintenance of construction equipment;
  - (h) temporary storage of soils and other material of value to be in accordance with best practice;
  - (i) installation of hoardings and/or fencing;
  - (j) safe storage of polluting materials;
  - (k) protocol for flood warning and a flood incident management plan;
  - (l) methods to prevent water pollution and adverse impacts upon surface water drainage;
  - (m) restoration of site following completion of construction;
  - (n) measures to deal with contamination which is likely to cause significant harm to persons or significant pollution of controlled waters or the environment; and
  - (o) appropriate procedures to address any unexploded ordnance that may be encountered.
- (2) All construction works must be undertaken in accordance with the approved code of construction practice.

### **Construction Hours**

12.—(1) Construction works relating to Work Nos. 1, 2, 3, 4 and 5 and must not take place on Sundays, bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0700 to 1300 hours on a Saturday.

(2) The restrictions in sub-paragraph (1) do not apply to construction works where these—

- (a) are carried out within existing buildings or buildings constructed as part of the authorised development;
- (b) are carried out with the prior approval of the relevant planning authority;
- (c) are associated with an emergency; or
- (d) are associated with slip form working.

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

### **Construction traffic management plan(s)**

13.—(1) No part of the pre-commencement works may be carried out and no part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and approved by the relevant planning authority (in consultation with the relevant highway authority and, for streets within the London Borough of Bexley, Transport for London). The construction traffic management plan(s) must be substantially in accordance with the outline construction traffic management plan and must include the following (as applicable for the part of the authorised development to which the construction traffic management plan relates)—

- (a) construction vehicle routing plans in respect of both workers and deliveries;
- (b) proposals for the scheduling and timing of movements of delivery vehicles including details of abnormal indivisible loads;

- (c) site access plans;
- (d) where practicable, temporary diversions of any public rights of way;
- (e) 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;
- (f) proposals for the management of junctions to and crossings of highways and other public rights of way;
- (g) a construction logistics plan; and
- (h) a construction worker travel plan, including details of the temporal distribution of workers at Work No. 5(q), Work No. 8 and Work No. 9(d), the likely number of worker vehicle movements and the management of workforce parking.

(2) The construction traffic management plan(s) submitted pursuant to sub-paragraph (1) must be accompanied by a statement explaining how the likely construction traffic impacts identified in the environmental statement are addressed through the measures contained in the construction traffic management plan(s).

(3) The construction traffic management plan(s) must be implemented as approved by the relevant planning authority.

### **Heavy commercial vehicle movements delivering waste**

14.—(1) Subject to sub-paragraph (2) the number of two-way vehicle movements (one vehicle in and one vehicle out) made by heavy commercial vehicles delivering waste to work number 1A and work number 1B from the street known as Norman Road during commissioning and the operational period must not exceed a maximum of 90 per day (90 vehicles in and 90 vehicles out).

(2) In the event of a jetty outage, the number of two-way vehicle movements (one vehicle in and one vehicle out) made by heavy commercial vehicles delivering waste to work number 1A and work number 1B from the street known as Norman Road during commissioning and the operational period must not exceed a maximum of 300 per day (300 vehicles in and 300 vehicles out) and must not exceed—

- (a) between the hours of 0730–0900, a maximum of 30 (30 vehicles in and 30 vehicles out); and
- (b) between the hours of 1630–1800, a maximum of 30 (30 vehicles in and 30 vehicles out).

(3) Save where there is a jetty outage, incinerator bottom ash must only be removed via river.

(4) On the first anniversary of the date of final commissioning and annually thereafter, and following any reasonable request by the relevant planning authority (up to a maximum of four requests per year), the undertaker must provide the relevant planning authority with a record of the following for the preceding period—

- (a) confirmation whether or not a jetty outage occurred during the period; and
- (b) the number of two-way vehicle movements (one vehicle in and one vehicle out) made by heavy commercial vehicles delivering waste to work number 1A and work number 1B from the street known as Norman Road in that period, such number to be split out clearly so that the number of movements during any jetty outage can be ascertained.

(5) In this article—

- (a) “heavy commercial vehicle” has the meaning given by section 138 of the Road Traffic Regulation Act 1984; and
- (b) “jetty outage” means circumstances caused by factors beyond the undertaker’s control in which waste has not or could not be received at the jetty or ash containers have not been or could not be despatched from the jetty for a period in excess of 48 hours.

### **Operational worker travel plan**

15.—(1) Prior to the date of final commissioning, an operational worker travel plan for those working at the authorised development must be submitted to and approved by the relevant planning

authority (in consultation with the relevant highway authority and, for streets within the London Borough of Bexley, Transport for London). The operational worker travel plan must be in substantial accordance with the outline worker travel plan and set out measures to encourage staff working at Work Nos. 1, 2, 3, 4 and 5 to use sustainable modes of transport.

(2) The operational worker travel plan must be implemented as approved.

### **Operational lighting strategy**

16.—(1) No part of Work Nos. 1, 2, 3, 4, 5 and 6 may commence until a written scheme for the management and mitigation of operational external artificial light emissions for that part has been submitted to and approved by the relevant planning authority. The written scheme must be substantially in accordance with the outline lighting strategy.

(2) The approved scheme for the management and mitigation of operational external artificial light emissions must be implemented as approved.

### **River wall**

17.—(1) No part of Work Number 1 may commence until a river wall condition survey on those parts of the river wall within the order limits has been submitted to and approved by the Environment Agency.

(2) The river wall condition survey submitted pursuant to sub-paragraph (1) must where appropriate identify any remedial works required to bring the tidal flood defence up to a good standard considering a design life of 100 years.

(3) The remedial works required to bring the defence up to a good standard identified pursuant to sub-paragraph (2) must be carried out within 3 years of the date that the condition survey is approved under sub-paragraph (1).

### **Community benefits**

18.—(1) No part of the authorised development may commence until an employment and skills plan has been submitted to and approved by the relevant planning authority.

(2) The employment and skills plan must be implemented as approved by the relevant planning authority.

### **Notice of start of commissioning and notice of date of final commissioning**

19.—(1) Notice of the intended start of commissioning of Work No. 1 must be given to the relevant planning authority prior to such start and in any event within seven days from the date that commissioning is started.

(2) Within seven days of completing final commissioning, the undertaker must provide the relevant planning authority with notice of the date upon which such commissioning was duly completed.

### **Combined heat and power**

20.—(1) On the date that is 12 months after the date of final commissioning, the undertaker must submit to the relevant planning authority for its approval a report (“the CHP review”) updating the CHP statement.

(2) The CHP review submitted and approved must—

(a) assess potential commercial opportunities that reasonably exist for the export of heat from Work No. 1 as part of a Good Quality CHP scheme (as defined in CHPQA Standard Issue 3) as at the time of submission of the CHP review;

(b) state whether or not sufficient details are known about the likely district heat network to enable the undertaker to install the necessary combined heat and power pipework (Work Number 6(a)) to the boundary of Work Number 6 as shown on the works plans and, if so,

the undertaker must install such pipework to the boundary of Work Number 6 in accordance with those details and in the timeframe agreed in the CHP review or any revised CHP review; and

(c) include a list of actions (if any and in addition to (2)(b)) that the undertaker is reasonably required to take (without material additional cost to the undertaker) to increase the potential for the export of heat from Work No. 1.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review.

(4) Upon the approval of the first CHP review, the undertaker must establish a working group to progress the actions in the approved CHP review and any revised CHP review and to monitor and report on the progress of those actions to the relevant planning authority, such working group may be combined with the working group established in respect of combined heat and power opportunities from the energy from waste facility operated by RRRL and known as the Riverside Resource Recovery Facility.

(5) On each date during the operation of numbered work 1 that is four years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(6) Sub-paragraphs (2) and (3) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (1).

(7) In the event that the export of heat from the authorised development is provided pursuant to any CHP review, the undertaker is not required to carry out and submit any further CHP reviews.

### **Decommissioning**

21.—(1) Within 24 months of the permanent cessation of the operation of Work No. 1, details of a scheme for the restoration and aftercare of the land for Work No. 1 must be submitted to and approved by the relevant planning authority. The scheme must include details of structures and buildings to be demolished or retained, details of the means of removal of materials following demolition, phasing of demolition and removal, details of restoration works and phasing thereof.

(2) The scheme as approved must be implemented in accordance with the phasing set out therein.

### **Amendments to approved details**

22.—(1) With respect to the documents certified under article 40 (certification of plans etc) the parameters specified in the table in requirement 3 and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any requirement (together “Approved Documents, Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Documents, Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Documents, Plans, Parameters, Details or Schemes are to be taken to include the amendments approved by the relevant planning authority pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to Approved Documents, Plans, Parameters, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

### **Flood Risk Activity Permit Area**

23.—(1) In respect of the area defined by the red dotted line annotated as ‘16m FRAP Line’ on the FRAPA drawing:—

(a) no part of Work No. 1E and Work No. 5 must be constructed within that area; and

- (b) no hazardous material that could cause material damage to the flood defence structure must be stored within that area during both the construction of and operation of the authorised development.

**Finished Floor Levels**

24. The finished floor levels of Work Nos 1, 2, 3, 4, 5 and 6 must be set a minimum of 2.97 metres AOD.

SCHEDULE 3

Article 11

STREETS SUBJECT TO STREET WORKS

<u>(1)</u> <i>Area</i>	<u>(2)</u> <i>Streets subject to street works</i>	<u>(3)</u> <i>Description of the street works</i>
<a href="#"><u>In the London Borough of Bexley</u></a>	<a href="#"><u>Norman Road</u></a>	<a href="#"><u>Works for the provision of a new permanent access and works to alter an existing access (works forming part of Work No. 6) between the points marked C and D on sheet 2 of the access and public rights of way plan</u></a>
<a href="#"><u>In the London Borough of Bexley</u></a>	<a href="#"><u>Norman Road</u></a>	<a href="#"><u>Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 8) on the western side of Norman Road between the points marked BS and BT on sheet 2 of the access and public rights of way plan</u></a>
<a href="#"><u>In the London Borough of Bexley</u></a>	<a href="#"><u>Norman Road</u></a>	<a href="#"><u>Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 8) on the western side of Norman Road between the points marked BU and BV on sheet 2 of the access and public rights of way plan</u></a>
<a href="#"><u>In the London Borough of Bexley</u></a>	<a href="#"><u>Norman Road</u></a>	<a href="#"><u>Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BK and BL on sheet 2 of the access and public rights of way plan</u></a>
<a href="#"><u>In the London Borough of Bexley</u></a>	<a href="#"><u>Norman Road</u></a>	<a href="#"><u>Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BO and BP on sheet 3 of the access and public rights of way plan</u></a>
<a href="#"><u>In the London Borough of Bexley</u></a>	<a href="#"><u>Norman Road</u></a>	<a href="#"><u>Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BQ and BR on sheet 3 of the access and public rights of way plan</u></a>
<a href="#"><u>In the London Borough of Bexley</u></a>	<a href="#"><u>Norman Road</u></a>	<a href="#"><u>Works for the installation and maintenance of Work Nos. 6 and 9 in the street between the points marked C and D on sheet 2 of the access and public rights of way plan</u></a>
<a href="#"><u>In the London Borough of Bexley</u></a>	<a href="#"><u>Norman Road</u></a>	<a href="#"><u>Works for the installation and maintenance of Work Nos. 7 and 9 in the street between the points marked D and H on sheets 2 and 3 of the access and public rights of way plan</u></a>



<a href="#">In the London Borough of Bexley</a>	<a href="#">FP2</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the public right of way between the western edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">FP2</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the western edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">FP4</a>	<a href="#">Works for the installation and maintenance of Work No. 7 and Work No. 9 in the public right of way between the eastern edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">FP4</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 7 and Work No. 9) between the eastern edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Picardy Manorway / Anderson Way / Bronze Age Way</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked H, H1 and I on sheets 3 and 4 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Picardy Manorway / Anderson Way / Bronze Age Way</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked H, H1 and I on sheets 3 and 4 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Bronze Age Way / Queen's Road</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked I and J on sheets 4, 5 and 6 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Bronze Age Way / Queen's Road</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked I and J on sheets 4, 5 and 6 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Queen's Road / Northend Road</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked J and K on sheets 6 and 7 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Queen's Road / Northend Road</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of</a>

		<a href="#">Work No. 9) between the points marked J and K on sheets 6 and 7 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Northend Road / Thames Road</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked K and L on sheets 7, 9 and 11 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Northend Road / Thames Road</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked K and L on sheets 7, 9 and 11 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked L, AX and M on sheet 11 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked L, AX and M on sheet 11 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked M and P on sheets 11 and 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points M and P on sheets 11 and 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">FP29</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked N and O on sheet 11 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">FP29</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked N and O on sheet 11 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked P and Q on Sheet 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked</a>

		<a href="#">P and Q on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked Q and X on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked Q and X on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">FP249</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked T and U on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">FP249</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked T and U on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">BY105</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the public right of way at the point marked R on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">BY105</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) at the point marked R on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">BY104</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked V and W on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">BY104</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked V and W on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Thames Road / Bob Dunn Way</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked X and Y on sheets 12 and 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Thames Road / Bob Dunn Way</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked</a>

		<a href="#">X and Y on sheets 12 and 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Thames Road / Bob Dunn Way</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked Y and AG on sheets 13 and 14 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Thames Road / Bob Dunn Way</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked Y and AG on sheets 13 and 14 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB5</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AB and AC on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB5</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AB and AC on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB5</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AA and Z on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB5</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AA and Z on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB5</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AC and Z on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB5</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AC and Z on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB1</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AD and AE on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB1</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked</a>

		<a href="#">AD and AE on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB1</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AD and AF on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB1</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AD and AF on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Bob Dunn Way / Joyce Green Lane</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked AG and BS on sheet 14 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Bob Dunn Way / Joyce Green Lane</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AG and BS on sheet 14 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Joyce Green Lane / private road</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked BS and AZ on sheet 14 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Unnamed path between private road / un-named minor road</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the area between the points marked AZ and BT on sheet 14 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">un-named minor road / private road</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked BT and BB on sheet 14 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">un-named minor road / private road</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked BT and BB on sheet 14 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">private road</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked BC and AX on sheets 14 and 15 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">private road</a>	<a href="#">Works for the installation and maintenance of Work No. 9 in the street between the points marked AX and AZ on sheet 15 of the access and public rights of way plan</a>

<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>Marsh Street North</u></a>	<a href="#"><u>Works for the installation and maintenance of Work No. 9 in the street between the points marked AY and BA on sheet 15 of the access and public rights of way plan</u></a>
<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>DB3</u></a>	<a href="#"><u>Works for the installation and maintenance of Work No. 9 in the street between the points marked BE and BD on sheet 15 of the access and public rights of way plan</u></a>
<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>private road / Littlebrook Manorway</u></a>	<a href="#"><u>Works for the installation and maintenance of Work No. 9 in the street between the points marked AZ and BF on sheet 15 of the access and public rights of way plan</u></a>
<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>Littlebrook Manorway / private road</u></a>	<a href="#"><u>Works for the installation and maintenance of Work No. 9 in the street between the points marked BF, BG and BI on sheets 15 and 16 of the access and public rights of way plan</u></a>
<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>Littlebrook Manorway / private road</u></a>	<a href="#"><u>Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked BF, BG and BI on sheets 15 and 16 of the access and public rights of way plan</u></a>
<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>private road</u></a>	<a href="#"><u>Works for the installation and maintenance of Work No. 9 in the street between the points marked BI and BJ on sheet 16 of the access and public rights of way plan</u></a>

STREETS SUBJECT TO PERMANENT AND TEMPORARY  
ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to alteration of layout</u>	<u>(3)</u> <u>Description of alteration</u>
<u>In the London Borough of Bexley</u>	<u>Norman Road</u>	<u>Works for the provision of a new permanent access and works to alter an existing access (works forming part of Work No. 6) between the points marked C and D on sheet 2 of the access and public rights of way plan</u>
<u>In the London Borough of Bexley</u>	<u>Norman Road</u>	<u>Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BK and BL on sheet 2 of the access and public rights of way plan</u>
<u>In the London Borough of Bexley</u>	<u>Norman Road</u>	<u>Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BO and BP on sheet 3 of the access and public rights of way plan</u>
<u>In the London Borough of Bexley</u>	<u>Norman Road</u>	<u>Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BQ and BR on sheet 3 of the access and public rights of way plan</u>

PART 2  
TEMPORARY ALTERATION OF LAYOUT

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to alteration of layout</u>	<u>(3)</u> <u>Description of alteration</u>
<u>In the London Borough of Bexley</u>	<u>Norman Road</u>	<u>Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 8) on the western side of Norman Road between the points marked BS and BT on sheet 2 of the access and public rights of way plan</u>
<u>In the London Borough of Bexley</u>	<u>Norman Road</u>	<u>Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 8) on the western side of Norman Road between the points marked BU and BV on sheet 2 of the access and public rights of way plan</u>
<u>In the London Borough of Bexley</u>	<u>FP2</u>	<u>Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the western edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan</u>
<u>In the London Borough of Bexley</u>	<u>FP4</u>	<u>Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 7 and Work No. 9) between the eastern edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan</u>
<u>In the London Borough of Bexley</u>	<u>Picardy Manorway / Anderson Way / Bronze Age Way</u>	<u>Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked H, H1 and I on sheets 3 and 4 of the access and public rights of way plan</u>
<u>In the London Borough of Bexley</u>	<u>Bronze Age Way / Queen's Road</u>	<u>Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked I and J on sheets 4, 5 and 6 of the access and public rights of way plan</u>
<u>In the London Borough of Bexley</u>	<u>Queen's Road / Northend Road</u>	<u>Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked J and K on sheets 6 and 7 of the access and public rights of way plan</u>
<u>In the London Borough of Bexley</u>	<u>Northend Road / Thames Road</u>	<u>Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work</u>



		<a href="#">No. 9) between the points marked K and L on sheets 7, 9 and 11 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked L, AX and M on sheet 11 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points M and P on sheets 11 and 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">FP29</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked N and O on sheet 11 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked P and Q on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked Q and X on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">FP249</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked T and U on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">BY105</a>	<a href="#">Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) at the point marked R on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">BY104</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked V and W on sheet 12 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Thames Road / Bob Dunn Way</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked X and Y on sheets 12 and 13 of the access and</a>

		<a href="#">public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Thames Road / Bob Dunn Way</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked Y and AG on sheets 13 and 14 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB5</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AB and AC on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB5</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AA and Z on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB5</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AC and Z on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB1</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AD and AE on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB1</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AD and AF on sheet 13 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Bob Dunn Way / Joyce Green Lane</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AG and BS on sheet 14 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">un-named minor road / private road</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked BT and BB on sheet 14 of the access and public rights of way plan</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Littlebrook Manorway / private road</a>	<a href="#">Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked BG and BI on sheets 15 and 16 of the access and public rights of way plan</a>

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS OR PUBLIC RIGHTS OF WAY

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to temporary prohibition or restriction of use</u>	<u>(3)</u> <u>Extent of temporary prohibition or restriction of use of streets</u>
<u>In the London Borough of Bexley</u>	<u>FP3</u>	<u>Temporary closure of that part of the public right of way shown between the points marked A and B on sheet 2 of the access and public rights of way plan to install and facilitate the construction of Work No. 6</u>
<u>In the London Borough of Bexley</u>	<u>access road</u>	<u>Temporary closure of that part of the street hatched blue between the points marked C and D on sheet 2 of the access and public rights of way plan to install and facilitate the construction of Work Nos. 6 and 9</u>
<u>In the London Borough of Bexley</u>	<u>Norman Road</u>	<u>Temporary closure of that part of the street shown between the points marked D and H on sheets 2 and 3 of the access and public rights of way plan to install and facilitate the construction of Work Nos. 7 and 9</u>
<u>In the London Borough of Bexley</u>	<u>FP2</u>	<u>Temporary closure of that part of the public right of way shown between the western edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</u>
<u>In the London Borough of Bexley</u>	<u>FP4</u>	<u>Temporary closure of that part of the public right of way shown between the eastern edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan to install and facilitate the construction of Work No. 7 and Work No. 9</u>
<u>In the London Borough of Bexley</u>	<u>Picardy Manorway / Anderson Way / Bronze Age Way</u>	<u>Temporary closure of that part of the street shown between the points marked H, H1 and I on sheets 3 and 4 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</u>
<u>In the London Borough of Bexley</u>	<u>Bronze Age Way / Queen's Road</u>	<u>Temporary closure of that part of the street (up to half the width) shown between the points marked I and J on sheets 4, 5 and 6 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</u>
<u>In the London Borough of Bexley</u>	<u>Queen's Road / Northend Road</u>	<u>Temporary closure of that part of the street (up to half the width) shown</u>

		<a href="#">between the points marked J and K on sheets 6 and 7 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Northend Road / Thames Road</a>	<a href="#">Temporary closure of that part of the street (up to half the width) shown between the points marked K and L on sheets 7, 9 and 11 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Temporary closure of that part of the street (up to half the width) shown between the points marked L, AX and M on sheet 11 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Temporary closure of that part of the street (up to half the width) shown between the points marked M and P on sheets 11 and 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">FP29</a>	<a href="#">Temporary closure of that part of the public right of way shown between the points marked N and O on sheet 11 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Temporary closure of that part of the street (up to half the width) shown between the points marked P and Q on Sheet 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">Thames Road</a>	<a href="#">Temporary closure of that part of the street (up to half the width) shown between the points marked Q and X on sheet 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">FP249</a>	<a href="#">Temporary closure of that part of the public right of way shown between the points marked T and U on sheet 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">BY105</a>	<a href="#">Temporary closure of that part of the public right of way shown at the point marked R on sheet 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the London Borough of Bexley</a>	<a href="#">BY104</a>	<a href="#">Temporary closure of that part of the public right of way shown between the points marked V and W on sheet 12 of the access and public rights of way plan</a>

		<a href="#">to install and facilitate the construction of Work No. 9</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Thames Road / Bob Dunn Way</a>	<a href="#">Temporary closure of that part of the street (up to half the width) shown between the points marked X and Y on sheets 12 and 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Thames Road / Bob Dunn Way</a>	<a href="#">Temporary closure of that part of the street (up to half the width) shown between the points marked Y and AG on sheets 13 and 14 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB5</a>	<a href="#">Temporary closure of that part of the public right of way shown between the points marked AB and AC on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB5</a>	<a href="#">Temporary closure of that part of the public right of way shown between the points marked AA and Z on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB5</a>	<a href="#">Temporary closure of that part of the public right of way shown between the points marked AC and Z on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB1</a>	<a href="#">Temporary closure of that part of the public right of way shown between the points marked AD and AE on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">DB1</a>	<a href="#">Temporary closure of that part of the public right of way shown between the points marked AD and AF on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Bob Dunn Way / Joyce Green Lane</a>	<a href="#">Temporary closure of that part of the street (up to half the width) shown between the points marked AG and BS on sheet 14 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>
<a href="#">In the Borough of Dartford</a>	<a href="#">Joyce Green Lane / private road</a>	<a href="#">Temporary closure of that part of the street (up to half the width) shown between the points marked BS and AZ on sheet 14 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</a>

<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>unnamed path between private road / un-named minor road</u></a>	<a href="#"><u>Temporary closure of that part of the unnamed path shown between the points marked AZ and BT on sheet 14 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</u></a>
<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>un-named minor road / private road</u></a>	<a href="#"><u>Temporary closure of that part of the street shown between the points marked BT and BB on sheet 14 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</u></a>
<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>private road</u></a>	<a href="#"><u>Temporary closure of that part of the street shown between the points marked BC and AX on sheets 14 and 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</u></a>
<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>private road</u></a>	<a href="#"><u>Temporary closure of that part of the street shown between the points marked AX and AZ on sheet 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</u></a>
<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>Marsh Street North</u></a>	<a href="#"><u>Temporary closure of that part of the street shown between the points marked AY and BA on sheet 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</u></a>
<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>DB3</u></a>	<a href="#"><u>Temporary closure of that part of the public right of way shown between the points marked BE and BD on sheet 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</u></a>
<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>private road / Littlebrook Manorway</u></a>	<a href="#"><u>Temporary closure of that part of the street (up to half the width) shown between the points marked AZ and BF on sheet 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</u></a>
<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>Littlebrook Manorway / private road</u></a>	<a href="#"><u>Temporary closure of that part of the street (up to half the width) shown between the points marked BF, BG and BI on sheets 15 and 16 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</u></a>
<a href="#"><u>In the Borough of Dartford</u></a>	<a href="#"><u>private road</u></a>	<a href="#"><u>Temporary closure of that part of the street (up to half the width) shown between the points marked BI and BJ on sheet 16 of the access and public rights of way plan to install and facilitate the construction of Work No. 9</u></a>

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## SCHEDULE 6

Article 14

### PERMANENT STOPPING UP OF STREETS

<i><u>(1)</u></i> <i><u>Area</u></i>	<i><u>(2)</u></i> <i><u>Highway to be stopped up</u></i>	<i><u>(3)</u></i> <i><u>Extent of stopping up</u></i>
<u>In the London Borough of Bexley</u>	<u>Norman Road</u>	<u>That part of the street coloured green between the points marked C and D on sheet 2 of the access and public rights of way plan</u>

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

**Interpretation**

**1. In this Schedule—**

“Work No. 6 infrastructure” means any works or development comprised within Work No. 6 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans;

“Work No. 7 infrastructure” means any works or development comprised within Work No. 7 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 7 on the works plans;

“Work No. 8 infrastructure” means any works or development comprised within Work No. 8 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 8 on the works plans;

“Work No. 9 infrastructure” means any works or development comprised within Work No. 9 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 9 on the works plans;

“Work No. 9(a) and (b) infrastructure” means any works or development comprised within Work No. 9(a) and Work No. 9(b) only in Schedule 1; and

“Work No. 10 infrastructure” means any works or development comprised within Work No. 10 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 10 on the works plans.

<u>(1)</u> <i>Number of plot shown on the land plans</i>	<u>(2)</u> <i>Rights etc. which may be acquired</i>
<u>02/01, 02/03, 02/10, 02/13, 02/14, 02/15, 02/18, 02/19, 02/25, 02/29, 02/31, 02/32, 02/38</u>	<u>For and in connection with the Work No. 6 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, and a right of support for it, along with the right to prevent any works or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to protect the Work No. 6 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u>
<u>02/33, 02/34, 02/45, 02/46, 02/47, 02/50</u>	<u>For and in connection with the Work No. 7 infrastructure and Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection</u>



	<p><u>with the laying, installation, use and maintenance of the Work No. 7 infrastructure and Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure and Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure and Work No. 9 infrastructure, including the right to protect the Work No. 7 infrastructure and Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u></p>
<p><u>02/43, 02/44, 02/48, 02/49, 02/51</u></p>	<p><u>For and in connection with the Work No. 7 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to protect the Work No. 7 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u></p>
<p><u>02/33, 02/54, 02/57</u></p> <p><u>03/03, 03/04, 03/11, 03/12, 03/13</u></p> <p><u>04/01, 04/02</u></p> <p><u>05/01</u></p> <p><u>06/01, 06/02, 06/03, 06/04</u></p> <p><u>07/02, 07/09, 07/10</u></p> <p><u>09/01</u></p> <p><u>11/01, 11/03</u></p> <p><u>12/01, 12/03, 12/04, 12/05, 12/06, 12/08, 12/09, 12/11, 12/13, 12/14, 12/15, 12/16, 12/16(a), 12/17, 12/18, 12/19</u></p>	<p><u>For and in connection with the Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to protect the Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u></p>

<p><a href="#">13/01, 13/02, 13/03, 13/04, 13/05, 13/06, 13/07, 13/08, 13/09, 13/11, 13/13, 13/14, 13/15, 13/18</a></p> <p><a href="#">14/01, 14/02, 14/03, 14/04, 14/04(a), 14/04(b), 14/06, 14/07, 14/08, 14/09</a></p> <p><a href="#">15/01, 15/02, 15/03, 15/05</a></p> <p><a href="#">16/01, 16/02</a></p>	
<p><a href="#">03/06, 03/10</a></p>	<p><a href="#">For and in connection with the Work No. 8 infrastructure and Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8 infrastructure and Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8 infrastructure and Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 8 infrastructure and Work No. 9 infrastructure, including the right to protect the Work No. 8 infrastructure and Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</a></p>
<p><a href="#">07/03, 07/04, 07/05</a></p>	<p><a href="#">At footbridge level only: for and in connection with the Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to protect the Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</a></p>
<p><a href="#">07/06, 07/08</a></p>	<p><a href="#">At road level only: for and in connection with the Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with</a></p>

	<p><u>or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to protect the Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u></p>
<p><u>11/02, 12/10, 12/12</u></p>	<p><u>At road level (and below) only: for and in connection with the Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to protect the Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u></p>
<p><u>07/03, 07/06, 07/07, 07/08</u></p>	<p><u>At railway level only: for and in connection with the Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the maintenance of the Work No. 9 infrastructure along with the right to prevent interference with or obstruct access from and to the Work No. 9 infrastructure.</u></p>
<p><u>16/03</u></p>	<p><u>For and in connection with the Work No. 9 infrastructure and Work No. 10 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure and Work No. 10 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may</u></p>

	<p><u>interfere with or damage the Work No. 9 infrastructure and Work No. 10 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure and Work No. 10 infrastructure, including the right to protect the Work No. 9 infrastructure and Work No. 10 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u></p>
<p><u>16/04</u></p>	<p><u>For and in connection with the Work No. 10 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 10 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 10 infrastructure, or interfere with or obstruct access from and to the Work No. 10 infrastructure, including the right to protect the Work No. 10 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u></p>

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 are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on 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—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “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 paragraph 2(2).

(2) For section 5A (relevant valuation date) of the 1961 Act, after “if” 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 Riverside Energy Park Order 202\*;

(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 Riverside Energy Park Order 202\*) 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. 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 29 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 22 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right under article 24 (compulsory acquisition of rights)—

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

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

(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 restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

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(a) 1973 c.26

“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 modified 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 of the 1965 Act (powers of entry) is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 22), 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 (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

(7) Section 22 of the 1965 Act (interests omitted from purchase) as modified by article 29(3) 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 restriction imposed, subject to compliance with that section as respects compensation.

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

## “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 28 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Riverside Energy Park Order 202\* in respect of the land to which the notice to treat relates.

(2) But see article 25 (acquisition of subsoil only) of the Riverside Energy Park Order 202\* 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 twenty-eight 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.”



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SCHEDULE 9

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i><u>(1)</u></i> <i><u>Location</u></i>	<i><u>(2)</u></i> <i><u>Number of plot shown on land plans</u></i>	<i><u>(3)</u></i> <i><u>Purpose for which temporary possession may be taken</u></i>
<u>In the London Borough of Bexley</u>	<u>2/43, 2/44, 2/48, 2/49, 02/52, 03/05</u>	<u>Temporary use as laydown, construction compound, construction use and accesses for as described in Work No. 8</u>
<u>In the Borough of Dartford</u>	<u>13/12</u>	<u>Temporary use as laydown, construction compound and construction use as described in Work No. 9c</u>

PROTECTIVE PROVISIONSPART 1FOR THE PROTECTION OF RRRL

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

2. In this part of this Schedule—

“access road” means that part of the access road known as Norman Road between points C and D on the access and rights of way plan;

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

“apparatus” means any electric cables or electrical plant or other apparatus belonging to or maintained by RRRL and used for, or for purposes connected with, waste treatment and disposal and the generation, transmission, distribution or supply of electricity generated at the RRRL facility;

“internal street” means any roads that service the RRRL facility and which are located within the RRRL facility perimeter;

“RRRL facility” means the energy from waste facility and associated infrastructure at Norman Road, Belvedere, Bexley, Kent; and

“RRRL facility perimeter” means that part of the Order land identified as plots 02/01, 02/03, 02/10, 02/13, 02/14, 02/15, 02/18, 02/19, 02/25, 02/29, 02/31 and 02/32 on the land plans.

3. Upon the permanent stopping up of the access road pursuant to article 14 (permanent stopping up of streets), the undertaker must afford to RRRL the rights for RRRL and all persons authorised on its behalf to enter and pass and re-pass, on foot and/or with or without vehicles, plant and machinery, for all purposes in connection with its occupation and use of the RRRL facility.

4. The undertaker must not install pipes for the offtake of waste heat from the authorised development without first consulting RRRL over whether such pipes should be combined with any pipes for the offtake of waste heat from the RRRL facility. The undertaker must have regard to any consultation responses received from RRRL when finalising the location of pipes for the offtake of waste heat from the authorised development.

5. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary prohibition or restriction of use of streets and public rights of way), RRRL is at liberty at all times to take all necessary access across any internal street and to execute and do all such works and things in, upon or under any such internal street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction is in that internal street.

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

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker—

(a) acquires any interest in the RRRL facility perimeter in which any apparatus is placed or over which access to any apparatus is enjoyed; or

(b) requires that RRRL’s apparatus within the RRRL facility perimeter is relocated, diverted or removed.

any right of RRRL to maintain that apparatus in that land and to gain access to it must not be extinguished, and that apparatus must not be relocated, diverted or removed, until alternative apparatus has been constructed and is in operation, and access to it has been provided.

(2) If, for the purpose of executing any works in, on or under the RRRL facility perimeter, the undertaker requires the relocation, diversion or removal of any apparatus placed in the RRRL facility perimeter, the undertaker must give to RRRL for approval written notice of that requirement, a plan and section of the work proposed and of the proposed position of the alternative apparatus together with a timetable for when the alternative apparatus is to be provided or constructed by the undertaker.

(3) The approval of RRRL under sub-paragraph (2) must not be unreasonably withheld and if by the end of the period of 28 days beginning with the date on which the notice, plan, section and timetable have been supplied to RRRL, RRRL has not intimated approval or disapproval of such notice, plan, section and timetable and the grounds of disapproval, RRRL is deemed to have approved the said notice, plan, section and timetable as submitted.

(4) When giving its approval under sub-paragraph (2), RRRL may specify such reasonable requirements which in RRRL's opinion are necessary in the provision or construction of the alternative apparatus.

(5) In the event that RRRL issues a disapproval to the notice, plan, section and timetable within the 28 day period referred to in sub-paragraph (3), the undertaker may refer the matter to arbitration in accordance with article (procedures in relation to certain approvals etc.).

(6) Subject to sub-paragraph (8), any alternative apparatus to be provided or constructed pursuant to this paragraph must be provided or constructed by the undertaker in such manner and in such line or situation as is agreed with RRRL or in default of agreement settled by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

(7) Where the alternative apparatus is to be provided or constructed on land of the undertaker and once the undertaker has provided or constructed the alternative apparatus, the undertaker must grant RRRL the necessary rights to access and maintain the alternative apparatus on that land.

(8) If in the approval to the notice, plan, section and timetable under sub-paragraph (2) or by the end of the period of 28 days beginning with the date on which the arbitrator settles the alternative apparatus to be provided or constructed, RRRL gives notice to the undertaker that it desires to provide or construct the alternative apparatus and this is agreed to by the undertaker, RRRL, after the grant to RRRL of the rights as are referred to in sub-paragraph (9), must proceed without unnecessary delay to provide and 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.

(9) Where RRRL is to provide or construct the alternative apparatus, and the alternative apparatus is to be provided or constructed on land of the undertaker, the undertaker must grant RRRL the necessary rights to provide or construct the alternative apparatus on that land and the necessary rights to access and maintain the alternative apparatus on that land.

~~8.~~(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to RRRL rights in land of the undertaker for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those rights must be granted upon such terms and conditions as may be agreed between the undertaker and RRRL or in default of agreement settled by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

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

~~9.~~(1) Not less than 28 days before starting the execution of any works in, on or under the RRRL facility perimeter that may materially affect the operation of the RRRL facility, the undertaker must

submit to RRRL for approval a plan, section and description of the works to be executed and a timetable for when such works are to be carried out.

(2) The approval of RRRL under sub-paragraph (1) must not be unreasonably withheld and if by the end of the period of 28 days beginning with the date on which the plan, section, description and timetable have been supplied to RRRL, RRRL has not intimated disapproval of such plan, section, description and timetable and the grounds of disapproval, RRRL is deemed to have approved the said plan, section description and timetable as submitted.

(3) When giving its approval under sub-paragraph (1), RRRL may specify such reasonable requirements which in RRRL's opinion are necessary in the execution of the works.

(4) The works described in sub-paragraph (1) must be executed only in accordance with the plan, section, description and timetable submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be given in accordance with sub-paragraph (3) by RRRL.

(5) In the event that RRRL issues a disapproval to the plan, section, description and timetable within the 28 day period referred to in sub-paragraph (1), the undertaker may refer the matter to arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

(6) 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.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to RRRL 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.

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to RRRL the reasonable expenses incurred by RRRL in, or in connection with, the inspection, removal, alteration or protection of any apparatus within the RRRL facility perimeter or the provision or construction of any alternative apparatus which RRRL elects to carry out itself as referred to in paragraph 7(8).

(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 42 (procedures in relation to certain approvals etc.) 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 RRRL 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 7(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 RRRL 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 RRRL 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.

11. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and RRRL 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 ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

12. The provisions of this Part have effect for the protection of utility undertaker unless otherwise agreed in writing between the undertaker and the utility undertaker in question.

13. 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 a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by the utility undertaker for the purposes of electricity supply;

(b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of gas supply;

(c) in the case of a utility undertaker within paragraph (c) of the definition of that term—

(i) mains, pipes or other water apparatus belonging to or maintained by the utility undertaker for the purposes of water supply; and

(ii) mains, pipes or other water apparatus that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991(b); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act(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 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 in each case 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;

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(a) 1989 c.29.

(b) 1991 c.56.

(c) 1991 c.56. Section 102 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.

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

“utility undertaker” means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);

(c) a water undertaker within the meaning of the Water Industry Act 1991; and

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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

14. 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 Part 3 of the 1991 Act.

15. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary prohibition or restriction of use of streets and public rights of way), 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.

16. 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.

17.—(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 42(3) (procedures in relation to certain approvals etc.).

(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 42(3) (procedures in relation to certain approvals etc.), and after the grant to the utility undertaker of any such facilities

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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).

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.

18.—(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 42(3) (procedures in relation to certain approvals etc.).

(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.

19.—(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 17, 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 12 to 18 apply as if the removal of the apparatus had been required by the undertaker under paragraph 17(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.

20.—(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 17(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

~~highways); and the undertaker shall not by reason of any duty under that article to maintain a street be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or~~

~~(b) have effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.~~

#### **Stopping up of streets**

~~11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.~~

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

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

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

~~(b) there is no right of access to the land from the street concerned; or~~

~~(c) there is reasonably convenient access to the land otherwise than from the street concerned; or~~

~~(d) the owners and occupiers of the land have agreed to the stopping up.~~

~~(5) 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 project so much of the site of the street as is bounded on both sides by land owned by the undertaker.~~

~~(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~

~~(7) This article is subject to article 39 (apparatus etc. of statutory undertakers).~~

#### **Application of the 1991 Act**

~~12. Works carried out under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part 3 of the 1991 Act (street works) as major transport works if—~~



~~(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or~~

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~~(b) they are works which, had they been carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts);~~

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

~~13.—(1) With effect from the [date of publication of this Order] [the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan], [the section of] the public right of way (being a *[insert one of: footpath/bridleway/byway open to all traffic/restricted byway]*) shown marked in [red] between the points [A] and [B] on the rights plan is extinguished.~~

~~(2) With effect from [that same date] *[insert later date]* an alternative section of *[insert description of right of way of that same type]* as marked in [green] between the points [C] and [D] on the rights plan is created.~~

~~(3) In this article—~~

~~“implementation plan” means the written plan agreed between the undertaker and the local highway authority for creation of the agreed alternative right of way to the defined standard; and~~

~~“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.~~

#### **Temporary stopping up of streets**

~~14.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—~~

~~(a) divert the traffic from the street; and~~

~~(b) subject to paragraph (2), prevent all persons from passing along the street.~~

~~(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.~~

~~(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.~~

~~(4) The undertaker shall not temporarily stop up, alter or divert—~~

~~(a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and~~

~~(b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.~~

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

#### **Access to works**

~~15. The undertaker may, for the purposes of the authorised project—~~

~~(a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule E (access to works); and~~

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

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#### **Agreements with street authorities**

~~16.—(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 over or under a railway authorised by this Order;~~

~~(b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;~~

~~(c) any stopping up, alteration or diversion of a street authorised by this Order; or~~

- (d) the carrying out in the street of any of the works referred to in article 9(1) (street works).
- (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.

#### **Construction of bridges and tunnels**

~~17. Any bridge or tunnel to be constructed under this Order for carrying a highway over or under a railway shall be constructed in accordance with the plans and specifications approved by the relevant planning authority after consultation with the highway authority.~~

#### **Level Crossings**

- ~~18.—(1) The undertaker may construct the railway so as to carry it on the level across the highways specified in Schedule K.~~
- ~~(2) The undertaker may in constructing any new level crossing alter the level of any highway specified in Schedule K.~~
- ~~(3) The highway authority and the undertaker may enter into agreements with respect to the construction and maintenance of any new level crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.~~
- ~~(4) In this article—~~  
~~“new level crossing” means the place at which the railway is authorised by this article to cross a highway on the level; and~~  
~~“the railway” means the railway authorised to be constructed by this Order.~~

#### **Railway and navigation undertakings**

- ~~19.—(1) Subject to the following provisions of this article, the undertaker may not under article 9 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—~~
  - ~~(a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or~~
  - ~~(b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person;~~~~except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.~~
- ~~(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.~~
- ~~(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.~~
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- ~~(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.~~

#### **Supplemental powers**

##### **Discharge of water**

- ~~20.—(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 project 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) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).~~
- ~~(3) The undertaker shall 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 shall not be unreasonably withheld.~~
- ~~(4) The undertaker shall not make any opening into any public sewer or drain except—~~
  - ~~(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and~~

~~(b) where that person has been given the opportunity to supervise the making of the opening.~~  
~~(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.~~  
~~(6) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.~~  
~~(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(b) (offences of polluting water).~~

~~(8) In this article—~~

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

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

### **Protective work to buildings**

~~21.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.~~

~~(2) Protective works may be carried out—~~

~~(a) 1991 c.56. Section 106 was amended by the Water Act 2003 (c.37), sections 36(2) and 99 subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641. There are other amendments to section 106 which are not relevant to this Order.~~

~~(b) 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) in Part 1 of Schedule 21 to S.I. 2007/3538.~~

~~(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5).~~

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~~(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or~~

~~(b) after the completion of that part of the authorised project in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised project is first opened for use.~~

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

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

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

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

~~(5) Before exercising—~~

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

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

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

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

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

~~(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 52 (arbitration).~~

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

~~(8) Where—~~

~~(a) protective works are carried out under this article to a building; and  
(b) within the period of 5 years beginning with the day on which the part of the authorised project carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project;  
the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.~~

~~(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).~~

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

~~(11) In this article “protective works” in relation to a building means—~~

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

~~(b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised project.~~

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

~~22.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project 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) shall, if so required, produce written evidence of their authority to do so; and~~

~~(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.~~

~~(4) No trial holes shall 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 shall not be unreasonably withheld.~~

~~(5) The undertaker shall 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 of the 1961 Act (determination of questions of disputed compensation).~~

#### **Removal of human remains**

~~23.—(1) In this article “the specified land” means *[insert description of the land]*.~~

~~(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it shall remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.~~

~~(3) Before any such remains are removed from the specified land the undertaker shall give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—~~

~~(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and~~

~~(b) displaying a notice in a conspicuous place on or near to the specified land.~~

~~(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker shall send a copy of the notice to *[insert relevant local authority]*.~~

~~(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.~~

~~(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—~~

~~(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or~~

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~~(b) removed to, and cremated in, any crematorium, and that person shall, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).~~

~~(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question shall be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who shall remove the remains and as to the payment of the costs of the application.~~

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

~~(9) If—~~

~~(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or~~

~~(b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or~~

~~(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or~~

~~(d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (10) the undertaker shall remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and so far as possible remains from individual graves shall be reinterred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.~~

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

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

~~(a) a certificate of re-interment or cremation shall be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and~~

~~(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to *[insert relevant local authority]* mentioned in paragraph (4).~~

~~(12) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.~~

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

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

~~(a) 1857 c.81. There are amendments to this Act which are not relevant to this Order.~~

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## **Powers of acquisition**

### **Compulsory acquisition of land**

**24.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project [or to facilitate, or is incidental, to it][or is required as replacement land].  
(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.  
(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.  
(4) This article is subject to article 31 (acquisition of land limited to subsoil lying more than 9 metres beneath surface) and article 35 (temporary use of land for carrying out the authorised project).

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

**25.** [Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981(a)(minerals) [is/are] incorporated in this Order subject to the modifications that—  
(a) paragraph 8(3) is not incorporated;  
(b) for “the acquiring authority” substitute “the undertaker”;  
(c) [insert additional modifications].

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

**26.**—(1) After the end of the period of [5 years] beginning on the day on which the Order is made—  
(a) no notice to treat shall be served under Part 1 of the 1965 Act; and  
(b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 29 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(b).  
(2) The authority conferred by article 35 (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

**27.**—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plan [rights plan].  
(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was  
(a) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.  
(b) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

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previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act as substituted by article 32 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.  
(4) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Private rights of way**

**28.**—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—  
(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),  
whichever is the earliest.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 38 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to —

(a) any notice given by the undertaker before —

(i) the completion of the acquisition of the 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 shall not apply to any right of way specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b) —

(a) is made with a person in or to whom the right of way 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 shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

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

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

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications:

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted —

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

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated.”

”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted —

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

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

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

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

~~(b) subsection (2) shall be omitted.~~

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

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

#### **Acquisition of subsoil only**

~~30.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in article 24(1) (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.~~

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

~~(3) Paragraph (2) shall not prevent article 32 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.~~

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

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#### **Acquisition of land limited to subsoil lying more than 9 metres beneath surface**

~~31.—(1) This article applies to the land specified in Schedule F (land of which only subsoil more than 9 metres beneath surface may be acquired).~~

~~(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 24 (compulsory acquisition of land) so much of, or such rights in, the subsoil of the land as may be required for the purposes of the authorised project.~~

~~(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, the undertaker shall not be required to acquire a greater interest in the land or an interest in any other part of it.~~

~~(4) References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose “level of the surface of the land” means—~~

~~(a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;~~

~~(b) in the case of a watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or~~

~~(c) in any other case, ground surface level.~~

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

~~32.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—~~

~~(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and~~

~~(b) a copy of this article is served on the owner with the notice to treat.~~

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

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

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



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

~~(a) without material detriment to the remainder of the land subject to the counter notice; or  
(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter notice and without seriously affecting the amenity and convenience of the house,  
the owner shall be required to sell the land subject to the notice to treat.~~

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

~~(a) without material detriment to the remainder of the land subject to the counter notice; or  
(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter notice and without seriously affecting the amenity and convenience of the house,  
the notice to treat shall be deemed to be a notice to treat for that part.~~

~~(7) If on such a reference the tribunal determines that—  
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~~(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter notice; but~~

~~(b) the material detriment is confined to a part of the land subject to the counter notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.~~

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

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

~~(b) the material detriment is not confined to a part of the land subject to the counter notice, the notice to treat shall be deemed to be a notice to treat for the land subject to the counter notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.~~

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

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

#### **Application of the Land Compensation Act 1973**

~~33.—(1) Any regulations made by the Secretary of State under section 20 (sound proofing of buildings affected by public works) and 20A (power to make payments in respect of caravans and other structures affected by noise of public works) of the Land Compensation Act 1973(a) which apply to a railway provided or used in the exercise of statutory powers shall apply to the railway comprised in the authorised project as if that railway was provided or used in the exercise of statutory powers.~~

~~(2) Section 28 (power to pay expenses) of the Land Compensation Act 1973 shall have effect as if any works comprised in the authorised project were public works for the purposes of that section.~~

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

~~34.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air space over, any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air space for those purposes or any other purpose ancillary to~~

~~the authorised project.~~

~~(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.~~

~~(a) 1973 c.26. Section 20 was amended by subsections (6) and (12) of section 146 of, and Schedule 13 to, the Road Traffic Regulation Act 1984 (c.27). Subsection (10) of section 20 was repealed by section 343(3) of, and Schedule 25 to, the Highway Act 1980 (c.66) and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c.42). There are other amendments to the 1973 Act which are not relevant to this Order.~~

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~~(3) Paragraph (2) shall not apply in relation to—~~

~~(a) any subway or underground building; or~~

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

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

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

### **Temporary use of land for carrying out the authorised project**

~~35.—(1) The undertaker may, in connection with the carrying out of the authorised project—~~

~~(a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule G (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 project specified in column (4) of that Schedule;~~

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

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

~~(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker shall 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 after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule G.~~

~~(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.~~

~~(5) The undertaker shall 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, shall be determined under Part 1 of the 1961 Act.~~

~~(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, 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) except that the undertaker shall not be precluded from—~~

~~(a) acquiring new rights over any part of that land under article 27 (compulsory acquisition of rights); or~~

~~(b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 30 (acquisition of subsoil only) or in accordance with article 31 (acquisition of land limited to subsoil lying more than 9 metres beneath surface).~~

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

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

**Temporary use of land for maintaining authorised project**

~~36.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—~~

~~(a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; 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) shall 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 shall 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 project 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 shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.~~

~~(6) The undertaker shall 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, shall be determined under Part 1 of the 1961 Act.~~

~~(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, 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 shall not be required to acquire the land or any interest in it.~~

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

~~(11) In this article “the maintenance period”, in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project is first opened for use.~~

**Special category land**

~~37.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and *[insert name of relevant body]* has certified that a scheme for the provision of the replacement land as *[common/open space/fuel or field garden allotment]* has been implemented to its satisfaction.~~

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~~(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in *[insert name of relevant body]* subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3) In this article—~~

~~“the special category land” means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled “Special Category Land Plan” attached to the land plan, which may be acquired compulsorily~~

under this Order and for which replacement land is to be provided; and  
“the replacement land” means the land identified in the book of reference and on the plan  
entitled “Replacement Land Plan” attached to the land plan.

### **Statutory undertakers**

**38.** The undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference.

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

**39.**—(1) Where a street is stopped up under article 11 (stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 11 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

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

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

(b) ~~(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, ~~execution of the relocation works exceeding that which would have been involved if the apparatus~~ 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 42(3) (procedures in relation to certain approvals etc.) to be necessary, then, if ~~it such placing~~ 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.

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~~may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.~~

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

- (a) ~~(a)~~ an extension of apparatus to a length greater than the length of existing apparatus ~~shall~~ 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 17(2); and apparatus; and

- (b) ~~(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 ~~shall~~ is to be treated as if it also had been agreed or had been so determined.

~~(6) An amount which, apart from this paragraph, would be payable to a statutory utility in~~

~~respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4))~~

~~(5) shall, 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.~~

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

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

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

~~(8) In this article—~~

21.—(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 17(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 17(2) 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.

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

## PART 3

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

23.—(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 in Part 3 of the 1991 Act; the electronic communications code;

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

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

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(a) 2003 c.21.

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

#### ~~Recovery of costs of new connections~~

~~40.—(1) Where any apparatus of a public utility undertaker or of a public communications~~

~~“electronic communications code network” means—~~

- ~~(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and~~
- ~~(b) an electronic communications network which the Secretary of State is providing or proposing to provide;~~

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

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

~~24. provider is removed under article 38— The exercise of the powers of article 33 (statutory undertakers) any person who is the owner or is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.~~

~~25.—(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—~~

~~occupier of premises to which a supply was given from that apparatus shall 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) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 38, any person who is—~~

~~(a) the owner or occupier of premises the drains of which communicated with that sewer; or~~

~~(b) the owner of a private sewer which communicated with that sewer;~~

~~shall 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 shall not have effect in relation to apparatus to which article 39 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.~~

~~(4) In this paragraph—~~

~~(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.~~

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

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

## **Operations**

### **Operation and use of railways**

~~41.—(1) The undertaker may operate and use the railway and any other elements of the authorised project as a system, or part of a system, of transport for the carriage of passengers and goods.~~

~~(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993(a) (the provision of railway~~

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

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

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

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

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

(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 42(3) (procedures in relation to certain approvals etc.).

26. This Part of this Schedule does not apply to—

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

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

## PART 4

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

28.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” shall be construed accordingly;

“damage” includes (but is not limited to) scouring, erosion, loss of structural integrity and environmental damage to any drainage work or any flora or fauna dependent on the aquatic environment, and “damaged” is to be construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

“plans” includes sections, drawings, specifications, calculations and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) affect the conservation, distribution or use of water resources; or
- (d) affect the conservation value of the main river and habitats in its immediate vicinity;

“undertaker” means Cory Environmental Holdings Limited (company number 05360864) and Riverside Energy Park Limited (company number 11536739) or any other person who for the time being has the benefit of this Order in accordance with article 8 and 9 of this Order; and

services);

#### **Fares**

~~42. The undertaker may demand, take and recover or waive such charges for carrying passengers or goods on the railway comprised in the authorised project, or for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.~~

#### ~~**Deemed consent under section 34 of the Coast Protection Act 1949**~~

~~43. The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949(b) to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.~~

#### ~~**Deemed licence under Part 2 of the Food and Environment Protection Act 1985**~~

~~44. The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985(e) to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.~~

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

~~45.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, 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 project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised project.~~

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

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

~~(a) 1993 c.43. This Act has been amended by the Transport Act 2000 (c. 38), the Railways and Transport Safety Act 2003 (c.20) and the Railways Act 2005 (c.14). There are other amendments to this Act which are not relevant to this Order.~~

~~(b) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other amendments to the 1949 Act which are not relevant to this Order.~~

~~(c) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this Order.~~

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#### ~~**Trees subject to tree preservation orders**~~

~~46.—(1) The undertaker may fell or lop any tree described in Schedule J and identified on the *insert name* plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—~~

~~(a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised project.~~

~~(2) In carrying out any activity authorised by paragraph (1) —~~

~~(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and~~

~~(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.~~

~~(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.~~

~~(4) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.~~

#### ~~**Miscellaneous and general**~~

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

~~47.—(1) This article applies to—~~

~~(a) any agreement for leasing to any person the whole or any part of the authorised project 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 project, 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 shall prejudice the operation of any agreement to which this article applies.

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

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

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

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

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

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

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

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or

(ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25;

or

(ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall 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 project.

#### **Protections of Interests**

50. Schedule L to this Order has effect.

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

51.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

(a) the book of reference;

(b) the land plan;

(c) the rights plan;

(d) the works plan;

(e) the sections; and  
(f) any other plans or documents referred to in this Order,  
for certification that they are true copies of the documents referred to in this Order.  
(2) A plan or document so certified shall be admissible in any proceedings as evidence of the  
contents of the document of which it is a copy.

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

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

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### **Arbitration**

~~52. Any difference under any provision of this Order, unless otherwise provided for, shall 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  
*insert appropriate body*.~~

## **Schedule A**

### **AUTHORISED PROJECT**

#### **Part 1**

#### **AUTHORISED DEVELOPMENT**

*[NOTE: This Part should describe as fully as possible the elements of the proposed project  
(including any associated development), which are development for the purposes of section 32 of  
the 2008 Act, for which development consent is sought. It should not include any elements of  
development which would be authorised by specific provisions in the Order.]*

#### **Part 2**

#### **ANCILLARY WORKS**

*[NOTE: This Part should describe as fully as possible the ancillary works for which consent is  
sought and which are not development within the meaning of section 32 of the 2008 Act and which  
are not be the subject of a separate provision [article] in this Order.]*

## **Schedule B**

### **STREETS SUBJECT TO STREET WORKS**

*(1)(2)*

*Area Street subject to street works*

## **Schedule C**

### **STREETS TO BE STOPPED UP**

#### **Part 1**

#### **STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED**

*(1)(2)(3)(4)*

*Area Street to be stopped*

*up*

*Extent of stopping up New street to be  
substituted*

#### **Part 2**

#### **STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED**

*(1)(2)(3)*

*Area Street to be stopped up Extent of stopping up*

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## **Schedule D**

### **STREETS TO BE TEMPORARILY STOPPED UP**

*(1)(2)(3)*

*Area Street to be temporarily  
stopped up*

*Extent of temporary stopping*

*up*

## **Schedule E**

### **ACCESS TO WORKS**

*(1)(2)*

*Area Description of access*

#### **Schedule F**

~~LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH  
SURFACE MAY BE ACQUIRED~~

~~(1)(2)~~

~~Area Number of land shown on land plan~~

#### **Schedule G**

~~LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN~~

~~(1)(2)(3)(4)~~

~~Area Number of land shown~~

~~on land plan~~

~~Purpose for which  
temporary possession~~

~~may be taken~~

~~Relevant part of the~~

~~Authorised project~~

#### **Schedule H**

~~DEEMED CONSENT UNDER COAST PROTECTION ACT 1949~~

~~{Insert details of deemed consent}~~

#### **Schedule I**

~~DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION  
ACT 1985~~

~~{Insert details of deemed licence}~~

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#### **Schedule J**

~~TREES SUBJECT TO TREE PRESERVATION ORDERS~~

~~(1)(2)(3)~~

~~Type of tree Number [reference] of tree  
shown on land plan~~

~~Work to be carried out~~

#### **Schedule K**

~~LEVEL CROSSINGS~~

~~{Insert details of level crossings}~~

#### **Schedule L**

~~PROTECTIVE PROVISIONS~~

~~{Insert details of protective provisions}~~

~~SCHEDULE 3 Article 2~~

~~Model provisions for harbours~~

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**Preliminary**

**Interpretation**

**1.—(1) In this Order—**

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(a);

“the 1961 Act” means the Land Compensation Act 1961(b);

“the 1965 Act” means the Compulsory Purchase Act 1965(c);

“the 1980 Act” means the Highways Act 1980(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);

“ancillary works” means the ancillary works described in Part 2 of Schedule A (authorised project) [and any other works authorised by the Order] and which are not development within the meaning of section 32 of the 2008 Act;

“area of seaward construction activity” means the area of the sea within the Order limits shown on the land plan;

(a) 1847 c.27. Sections 24, 94 and 95 were repealed by the Statute Law (Repeals) Act 1993 (c.50); section 26 was repealed by section 56(4) of, and Schedule 11 to, the Courts Act 1971 (c.23); section 28 was amended by section 141 of, and Schedule 11 to, the Post Office Act 1969 (c.48); sections 54, 67 and 98 were amended by section 46 of the Criminal Justice Act 1982 (c.48); section 71 was amended by S.I.1987/37; section 91 was repealed by the Statute Law Revision Act 1894 (c.56); section 93 was repealed by the Statute Law Revision Act 1875 (c.66); and section 96 was repealed by the Perjury Act 1911 (c.6); section 17. There are other amendments to the 1847 Act which are not relevant to this Order.

(b) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.

(c) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(d) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted by and section 1(3) was amended by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1)(2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(e) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3) and (4)(a) and (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(f) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(g) 2008 c.29.

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“authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;

“the authorised project” means the authorised development and the ancillary works authorised by this Order;

“the book of reference” means the book of reference certified by the decision-maker 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;

“conservancy authority” has the same meaning as in section 313 of the Merchant Shipping Act 1995(a);

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

“the decision-maker” has the same meaning as in section 103 the 2008 Act;

“harbour” means the harbour constructed by the undertaker in pursuance of the powers conferred on them by [insert title of Act/Orders] Acts and Orders [insert dates of Act/Orders] and this Order and includes the open cut or channel also constructed under those powers, and all other works, land, buildings, ancillary works, plant, property and conveniences connected with them, as from time to time existing;

“the harbourmaster” means the harbourmaster appointed under this Order;

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

“the land plan” means the plan certified as the land plan by the decision-maker for the purposes of this Order;

“level of high water” means the level of mean high water springs;

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

“the Order limits” means the limits shown on the works plan within which the authorised project may be carried out;

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

“relevant planning authority” means —

~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii) a National Park Authority;~~

~~(iii) the Broads Authority; and~~

~~(iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~

~~“rights plan” means the plan certified as the rights plan by the decision maker for the purposes of this Order;~~

~~“the sections” means the sections shown on the plan certified as the section drawings plan by the decision maker for the purposes of this Order;~~

~~“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;~~

~~(a) 1995 c.21. There are amendments to section 313 which are not relevant to this Order.~~

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

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

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

~~“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;~~

~~“tree preservation order” has the meaning given in section 198 of the 1990 Act;~~

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

~~“Trinity House” means the Corporation of Trinity House of Deptford Strond;~~

~~“undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act;~~

~~“the undertaking” means the harbour undertaking of the undertaker as authorised from time to time;~~

~~“vessel” means every description of vessel, however propelled or moved, and includes a nondisplacement~~

~~craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;~~

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

~~29.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency for its approval plans of the specified work together with the details of the positioning of any structure within the main river and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably require.~~

~~“the works plan” means the plan certified as the works plan by the decision maker for the purposes of this Order.~~

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

~~(3) All points, directions, lengths, areas and other measurements stated in this Order are approximate and distances between points on a work comprised in the authorised project shall be~~

~~(2) Any submission made by the undertaker under sub-paragraph (1), and any approval given by the agency under this sub-paragraph, may be in respect of all or part of a specified work.~~

~~(3) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency under sub-paragraph (1) or settled in accordance with paragraph 38 where applicable, and in accordance with any reasonable conditions or requirements specified under this paragraph.~~

~~(4) Any approval of the Agency required under this paragraph—~~

~~(a) must not be unreasonably withheld or delayed;~~

- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(5) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (4)(b).

30. Without limiting paragraph 29, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased.

~~taken to be measured along that~~ by reason of any specified work.

~~(4) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.~~

~~[NOTE: In the case of off-shore development, which is outside the area of any planning authority, it will be necessary to identify another appropriate body instead of the planning authority.]~~

#### **Incorporation of the Harbours, Docks and Piers Clauses Act 1847**

~~2.—(1) With the exception of sections 6 to 23, 25, 31, the proviso to section 32, sections 42, 45, 48 to 50, 60 to 63, 66 to 69, 73, 77 and 79 to 90, 92, 97 and 102, the 1847 Act is incorporated in this Order subject to the modifications stated in paragraphs (2) and (3).~~

~~(2) In construing the 1847 Act as so incorporated—~~

~~(a) the expression “the special Act” means this Order;~~

~~(b) the expressions “the Promoters of the undertaking” and “the undertakers” mean the *[insert relevant body]*;~~

~~(c) the expression “the harbour, dock or pier” means the authorised project within the area of jurisdiction;~~

~~(d) the expressions “limits” and “prescribed limits” mean the area of jurisdiction;~~

~~(e) the expression “near the pier” does not extend beyond the area of jurisdiction;~~

~~(f) the expression “the harbour master”, in relation to the authorised project, means the *[insert relevant body]*;~~

~~(g) the definition of “vessel” in article 1(1) shall be substituted for the definition in section 3 of the 1847 Act;~~

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~~(h) section 53 of the 1847 Act shall not be construed as requiring the harbourmaster to serve written notice on the master of a vessel and directions given under that section may be communicated to the master of a vessel orally or otherwise; and~~

~~(i) any requirement to comply with a notice or direction given by the harbour master shall be construed as including a requirement that, in complying with such notice or direction, a person who is subject to the notice or direction shall also comply with any relevant notice or direction given by the *[insert relevant authority]* or the harbour master in the exercise by either or both of them of any function conferred by or under any enactment (including this Order).~~

#### **Principal powers**

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

~~3. Subject to the provisions of this Order and to the requirements in the Schedule (requirements) attached to this Order the undertaker is granted—~~

~~(a) development consent for the authorised development; and~~

~~(b) consent for the ancillary works;~~



to be carried out within the Order limits.

#### **Period for completion of work**

~~4. If the work is not completed within [five or such other period as specified] years from the coming into force of this Order or such extended time as the decision-maker may on the application of the undertaker allow, then on the expiration of that period or such extended time (as the case may be) the rights by this Order granted to the undertaker for making and maintaining the works shall cease except as to so much thereof as is then substantially commenced.~~

#### **Limits of harbour**

~~5.—(1) The limits of the harbour within which the undertaker shall exercise jurisdiction shall be the area described in Schedule K to this Order and shown, for the purpose of identification only, [...]; and in the following provisions of this Order, references to the limits of the harbour shall be construed as references to the limits so described.~~

~~(2) Any references to the limits of the harbour contained in the [insert name of Acts] Acts and Orders or in any byelaws, orders or regulations made under those Acts or Orders, shall be construed as references to the limits described in Schedule L to this Order.~~

~~(3) [any necessary revocations].~~

#### **Maintenance of authorised project**

~~6. The undertaker may at any time maintain the authorised project and within the limits of the harbour, from time to time alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.~~

#### **Subsidiary works**

~~7.—(1) The undertaker may from time to time within the Order limits provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the work or the operation of the undertaking, and for this purpose the undertaker may construct and maintain roads, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts,~~

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~~hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.~~

~~(2) Without prejudice to paragraph (1), the undertaker may within the Order limits carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the work including—~~

~~(a) works for the accommodation or convenience of vessels (including dolphins and pontoons); and~~

~~(b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.~~

~~(3) Article 3 of, and Parts [specify any required provisions in respect of permitted development right] 11 and 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995(a) shall apply as if this Order were a grant of planning permission.~~

#### **Benefit of Order**

~~8. Subject to article 9 (consent to transfer benefit of Order), the provisions of articles [ ] and [ ] [specify relevant articles] shall have effect solely for the benefit of [specify person, body or class of person].~~

~~[NOTE: This article is required where provisions of the Order are specific to a named undertaker or class of undertaker (see section 156(2)(benefit of order granting development consent) of the 2008 Act).]~~

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

~~9.—(1) The undertaker may, with the consent of the [specify person or body]—~~

~~(a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or~~

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

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

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

## **Streets**

### **Street works**

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

~~(a) break up or open the street, or any sewer, drain or tunnel under it;~~

~~(b) tunnel or bore under the street;~~

~~(c) place apparatus in the street;~~

~~(a) S.I. 1995/418. Relevant amendments were made by SI 1999/293, 1999/1783 and 2003/956. There are other amendments not relevant to this Order.~~

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~~(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) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).~~

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

~~[NOTE: This article should not be used for the purposes of authorising street works that affect a trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets subject to street works). For any street works affecting a trunk road the undertaker should make an application for a licence under section 50 of the 1991 Act.]~~

### **Stopping up of streets**

~~11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.~~

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

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

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

~~(b) there is no right of access to the land from the street concerned; or~~

~~(c) there is reasonably convenient access to the land otherwise than from the street concerned; or~~

~~(d) the owners and occupiers of the land have agreed to the stopping up.~~

~~(5) 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 project so much of the site of the street as is bounded on both sides by land owned by the undertaker.
- (6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (7) This article is subject to article 42 (apparatus etc. of statutory undertakers).

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#### **Temporary stopping up of streets**

**12.**—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and  
(b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) **Without prejudice to the generality of** paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.

(4) The undertaker shall not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (3) **without first consulting the** street authority; and  
(b) any other street without the consent of the street authority which may attach reasonable **conditions to any consent.**

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

#### **Access to works**

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

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule E (access to works); and  
(b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

#### **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 over or under a *[insert description of development]* authorised by this Order;  
(b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a *[insert description of development]*;  
(c) any stopping up, alteration or diversion of a street authorised by this Order; or  
(d) the carrying out in the street of any of the works referred to in article 10(1) (street works).

(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.

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

**15.**—(1) With effect from the *[date of publication of this Order]* *[the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard*

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*defined in the implementation plan]*, *[the section of]* the public right of way (being a *[insert one of: footpath/bridleway/byway open to all traffic/restricted byway]*) shown marked in *[red]* between

~~the points [A] and [B] on the rights plan is extinguished.~~

~~(2) With effect from [that same date] *[insert later date]* an alternative section of *[insert description of right of way of that same type]* as marked in [green] between the points [C] and [D] on the rights plan is created.~~

~~(3) In this article —~~

~~“implementation plan” means the written plan agreed between the undertaker and the local highway authority for creation of the agreed alternative right of way to the defined standard; and~~

~~“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.~~

## **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 project 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) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).~~

~~(3) The undertaker shall 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 shall not be unreasonably withheld.~~

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

~~(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and~~

~~(b) where that person has been given the opportunity to supervise the making of the opening.~~

~~(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.~~

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

~~(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(b) (offences of polluting water).~~

~~(8) In this article —~~

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

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

~~(b) 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) in Part 1 of Schedule 21 to S.I. 2007/3538.~~

~~(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5).~~

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

### **Protective work to buildings**

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

~~(2) Protective works may be carried out —~~

~~(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or~~

~~(b) after the completion of that part of the authorised project in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised project is first opened for use.~~

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

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

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

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

~~(5) Before exercising—~~

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

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

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

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

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

~~(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 57 (arbitration).~~

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

~~(8) Where—~~

~~(a) protective works are carried out under this article to a building; and~~

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

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

~~(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).~~

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

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

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

~~(b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised project.~~

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

**18.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project 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) shall, if so required, produce written evidence of their authority to do so; and~~

~~(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.~~

~~(4) No trial holes shall 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 shall not be unreasonably withheld.~~

~~(5) The undertaker shall 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 of the 1961 Act (determination of questions of disputed compensation).~~

#### **Removal of human remains**

~~19.—(1) In this article “the specified land” means *[insert description of the land]*.~~

~~(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it shall remove those remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.~~

~~(3) Before any such remains are removed from the specified land the undertaker shall give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—~~

~~(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and~~

~~(b) displaying a notice in a conspicuous place on or near to the specified land.~~

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~~(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker shall send a copy of the notice to *[insert relevant local authority]*.~~

~~(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.~~

~~(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—~~

~~(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or~~

~~(b) removed to, and cremated in, any crematorium;~~

~~and that person shall, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).~~

~~(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question shall be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who shall remove the remains and as to the payment of the costs of the application.~~

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

~~(9) If—~~

~~(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or~~

~~(b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or~~

~~(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or~~

~~(d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (10) the undertaker shall remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks~~

suitable for the purpose and so far as possible remains from individual graves shall be re-interred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

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

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

(a) a certificate of reinterment or cremation shall be sent by the undertaker to the Registrar General by the undertaker giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to *[insert relevant local authority]* mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.

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

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

#### **Right to dredge**

**20.**—(1) The undertaker may, for the purposes of constructing and maintaining the work and of affording access to the work by vessels, from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the river as adjoin or are near to the work and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995) from time to time dredged by them.

(2) No such materials shall be laid down or deposited—

(a) in contravention of the provisions of any enactment as respects the disposal of waste; or

(b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by *[insert relevant body]*.

(3) *[if applicable]* The undertaker shall consult with *[name of separate conservancy port authority]* before exercising the rights conferred on them by this article.

#### **Tidal works not to be executed without approval of Secretary of State**

**21.**—(1) Unless its construction has commenced within five years *[or such other period as is prescribed or specified in the Order]* of the coming into force of this Order, no tidal work shall be constructed, reconstructed, extended, enlarged, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before that work is begun.

(2) Any request for the approval of the Secretary of State under paragraph (1) shall be accompanied by written evidence to demonstrate to the satisfaction of the Secretary of State that Schedule L (protective provisions) has been complied with as respects the tidal work for which approval is being requested.

(3) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that paragraph—

(a) the Secretary of State may by notice in writing require the undertaker at their own expense to remove the tidal work or any part of it and restore the site to its former condition; and, if on the expiration of 30 days beginning with the date when the notice is served on the undertaker they have failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; or

(b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the

undertaker.

#### **Abatement of works abandoned or decayed**

~~22.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.~~

~~(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable~~

~~(a) 1857 c. 81. There are amendments to this Act which are not relevant to this Order.~~

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~~apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under this article.~~

~~(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker.~~

#### **Survey of tidal works**

~~23. If the Secretary of State considers it expedient to do so, the Secretary of State may order a survey and examination of a tidal work or of the site on which it is proposed to construct the work; and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the undertaker.~~

#### **Lights on tidal works etc. during construction**

~~24. The undertaker shall at or near—~~

~~(a) a tidal work, including any temporary work; or~~

~~(b) any plant, equipment or other obstruction placed, in connection with any authorised development or any work authorised by article 7 (subsidiary works), within the area of seaward construction activity;~~

~~during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State *[and the conservancy authority if applicable or, failing agreement between them, the Secretary of State]* may from time to time direct.~~

#### **Provision against danger to navigation**

~~25. In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker shall as soon as reasonably practicable notify *[separate conservancy authority if applicable and]* Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House *[and the conservancy authority or, failing agreement between them, the conservancy authority]* may from time to time direct.~~

#### **Permanent lights on tidal works**

~~26. After the completion of a tidal work the undertaker shall at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as *[the separate conservancy authority if applicable and]* Trinity House *[or, failing agreement between them, the conservancy authority]* may from time to time direct.~~

#### **Rights to lease etc.**

~~27.—(1) The undertaker may at any time lease or grant for the purposes of the undertaking the use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings, equipment or other property forming part of the undertaking for such period or periods and on such terms and conditions as may be agreed between the undertaker and the persons taking the same.~~

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~~(2) A lease or grant made or given under paragraph (1) may include provisions delegating to the lessee or grantee any of the functions of the undertaker other than those specified in subparagraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964(a).~~



## Powers of acquisition

### Compulsory acquisition of land

**28.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project [or to facilitate, or is incidental, to it][or is required as replacement land].  
(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.  
(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.  
(4) This article is subject to article 35 (acquisition of land limited to subsoil lying more than 9 metres beneath surface) and article 38 (temporary use of land for carrying out the authorised project):

### Compulsory acquisition of land—incorporation of the mineral code

**29.** [Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981(b)(minerals) [is/are] incorporated in this Order subject to the modifications that—  
(a) paragraph 8(3) is not incorporated;  
(b) for “the acquiring authority” substitute “the undertaker”;  
(c) *[insert additional modifications]*.

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

**30.**—(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 shall be served under Part 1 of the 1965 Act; and  
(b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 33 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(e).  
(2) The authority conferred by article 38 (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.  
(a) 1964 c.40. Paragraph 9B was inserted by section 63 of, and paragraph 9 of Schedule 3 to, the Transport and Works Act 1992 (c.42).  
(b) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule 2 was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.  
(c) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

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### Compulsory acquisition of rights

**31.**—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the *[insert name]* plan.  
(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.  
(3) Subject to section 8 of the 1965 Act as substituted by article 36 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.  
(4) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### Private rights of way

**32.**—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—  
(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by

agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry);  
whichever is the earliest.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 41 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to —

(a) any notice given by the undertaker before —

(i) the completion of the acquisition of the 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 shall not apply to any right of way specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b) —

(a) is made with a person in or to whom the right of way is vested or belongs; and

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(b) is expressed to have effect also for the benefit of those deriving title from or under that person;

it shall be 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**

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

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

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted —

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

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated.

”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted —

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

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

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

(a) in subsection (1), after “publication” there shall be inserted “in a local newspaper

circulating in the area in which the land is situated"; and

(b) subsection (2) shall be omitted.

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

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

#### **Acquisition of subsoil only**

**34.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in article 28(1) (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

(3) Paragraph (2) shall not prevent article 36 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

#### **Acquisition of land limited to subsoil lying more than 9 metres beneath surface**

**35.**—(1) This article applies to the land specified in Schedule F (land of which only subsoil more than 9 metres beneath surface may be acquired).

(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 28 (compulsory acquisition of land) so much of, or such rights in, the subsoil of the land as may be required for the purposes of the authorised project.

(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, the undertaker shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose "level of the surface of the land" means—

(a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;

(b) in the case of a watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or

(c) in any other case, ground surface level.

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

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

(a) a notice to treat is served on a person ("the owner") under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land

consisting of a house with a park or garden ("the land subject to the notice to treat"); and

(b) a copy of this article is served on the owner with the notice to treat.

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

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

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

~~take the land subject to the counter notice, be referred to the tribunal.~~

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

~~(a) without material detriment to the remainder of the land subject to the counter notice; or~~

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

~~the owner shall be required to sell the land subject to the notice to treat.~~

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

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~~(a) without material detriment to the remainder of the land subject to the counter notice; or~~

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

~~the notice to treat shall be deemed to be a notice to treat for that part.~~

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

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

~~(b) the material detriment is confined to a part of the land subject to the counter notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.~~

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

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

~~(b) the material detriment is not confined to a part of the land subject to the counter notice, the notice to treat shall be deemed to be a notice to treat for the land subject to the counter notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.~~

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

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

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

~~37.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air space over, any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air space for those purposes or any other purpose ancillary to the authorised project.~~

~~(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) shall not apply in relation to—~~

~~(a) any subway or underground building; or~~

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

~~(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under~~

paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

#### **Temporary use of land for carrying out the authorised project**

~~38.—(1) The undertaker may, in connection with the carrying out of the authorised project—~~

~~(a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule G (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 project specified in column (4) of that Schedule;~~

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

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

~~(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker shall 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 after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule G.~~

~~(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.~~

~~(5) The undertaker shall 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, shall be determined under Part 1 of the 1961 Act.~~

~~(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, 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) except that the undertaker shall not be precluded from—~~

~~(a) acquiring new rights over any part of that land under article 31 (compulsory acquisition of rights); or~~

~~(b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 34 (acquisition of subsoil only) or in accordance with article 35 (acquisition of land limited to subsoil lying more than 9 metres beneath surface).~~

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

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

#### **Temporary use of land for maintaining authorised project**

~~39.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—~~

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~~(a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; 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) shall 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 shall 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 project 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 shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.~~

~~(6) The undertaker shall 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, shall be determined under Part 1 of the 1961 Act.~~

~~(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, 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 shall not be required to acquire the land or any interest in it.~~

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

~~(11) In this article "the maintenance period", in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project is first opened for use.~~

#### **Special category land**

~~40.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and *[insert name of relevant body]* has certified that a scheme for the provision of the replacement land as *[common/open space/fuel or field garden allotment]* has been implemented to its satisfaction.~~

~~(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in *[insert name of relevant body]* subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3) In this article—~~

~~"the special category land" means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled "Special Category Land Plan" attached to the land plan, which may be acquired compulsorily under this Order and for which replacement land is to be provided; and~~

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~~"the replacement land" means the land identified in the book of reference and on the plan entitled "Replacement Land Plan" attached to the land plan.~~

#### **Statutory undertakers**

~~41. The undertaker may—~~

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

~~(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference; and~~

~~(c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference.~~

**Apparatus and rights of statutory undertakers in stopped-up streets**

~~42.—(1) Where a street is stopped up under article 11 (stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.~~

~~(2) Where a street is stopped up under article 11 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—~~

~~(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or~~

~~(b) provide other apparatus in substitution for the existing apparatus and place it in such~~

31.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 30, must be constructed—

(a) without unreasonable delay in accordance with the plans approved under this Schedule; and

(b) to the reasonable satisfaction of the Agency.

and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 34, if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in the case of an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 38.

32.—(1) Subject to sub-paragraph (6), the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5) and paragraph 34, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) is received by the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any expenditure reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain a necessary consent or comply with conditions imposed by the Agency in accordance with this Schedule the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must upon receipt of the notice cease the specified works or part thereof until it has obtained the necessary consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 38.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so.

33. Subject to paragraph 34, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure reasonably incurred by the Agency in so doing from the undertaker.

34. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 3 days of the undertaker becoming aware of such obstruction, unless otherwise agreed with the Agency.

35. The undertaker must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

36.—(1) The undertaker is responsible for and must indemnify the Agency against all costs and losses not otherwise provided for in this Schedule which may be incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised works or the failure of any such works comprised within them; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised works or dealing with any failure of the authorised works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges;
- (b) staff costs and overheads; and



(c) legal costs; and

“losses” includes physical damage.

(3) The undertaker shall indemnify the Agency against all liabilities, claims and demands arising out of or in connection with the authorised works or otherwise out of the matters referred to in sub-paragraphs (1)(a) and (1)(b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

“claims” and “demands” include as applicable—

(a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand; and

(b) any interest element of sums claimed or demanded; and

“liabilities” includes—

(a) contractual liabilities;

(b) tortious liabilities (including liabilities for negligence or nuisance);

(c) liabilities to pay statutory compensation or for breach of statutory duty; and

(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker, such agreement not to be unreasonably withheld or delayed.

37. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

38. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under 42(3) (procedures in relation to certain approvals etc.), but otherwise will be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

## PART 5

### FOR THE PROTECTION OF RAILWAY INTERESTS

39. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 53, any other person on whom rights or obligations are conferred by that paragraph.

40. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 0204587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited 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 of the Companies Act 2006) the holding company of Network Rail

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(a) 1993 c.43

Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“protective works” means any works specified by the engineer under paragraph 35(4);

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

“railway property” means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail for or connected with the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

41.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent 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) In so far as any specified work or the acquisition or use of railway property or rights over railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

42.—(1) The undertaker must not exercise the powers conferred by articles 3 (development consent granted by the Order), 4 (maintenance of authorised development), 19 (authority to survey and investigate land), 20 (protective works to buildings), 21 (felling or lopping of trees), 22 (compulsory acquisition of land), 24 (compulsory acquisition of rights), 25 (acquisition of subsoil only), 26 (private rights) 27 (power to override easements and other rights), 31 (temporary use of land for carrying out the authorised development), 32 (temporary use of land for maintaining the authorised development) and 33 (statutory undertakers) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) or the 1981 Act as applied by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code operators: preliminary notices) of the 1990 Act or article 33 (statutory undertakers) in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

43.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer

and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is to be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2) Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using those railways (including any relocation, decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

**44.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 43(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 43;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work or a protective work, the undertaker must, regardless any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**45. The undertaker must—**

- (a) at all times afford reasonable facilities to the engineer for access to a specified work or a protective work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or a protective work or the method of constructing it.

46. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

47.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or the protective work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or protective work is to be constructed, Network Rail must assume construction of that part of the specified work or the protective work and the undertaker must, regardless of any such approval of a specified work or the protective work under paragraph 43(2) pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 48(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

48. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 43(4) or in constructing any protective works under the provisions of paragraph 43(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work.

49.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 43 for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 43) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified under to sub-paragraph (a); and

(c) ~~position as described in~~ Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified under to sub-paragraph (a).

~~(3) Subject to the following provisions of this article, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—~~

~~(a) the execution of the relocation works required in consequence of the stopping up of the street; and~~

~~(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.~~

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

~~(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in~~

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 43(1) have effect subject to this sub-paragraph.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker’s apparatus in the investigation of such EMI;

- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.
- (8) Where Network Rail approves modifications to Network Rail's apparatus under sub-paragraph (5) or (6)—

  - (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
  - (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 43.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 53 applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.
- (10) For the purpose of paragraph 48(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.
- (11) In relation to any dispute arising under this paragraph the reference in article 42(3) (procedures in relation to certain approvals etc.) to the Secretary of State is to be read as a reference to the Institution of Engineering and Technology.

50. If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or the protective work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or that protective work in such state of maintenance as not adversely to affect railway property.

51. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

52. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work or a protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

53.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or a protective work or the failure thereof or;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or a protective work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision must not (if it was done without negligence

on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand must be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) must include sums equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to under sub-paragraph (4).

(6) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss of profits, except that the sums payable by the undertaker under that sub-paragraph include a sum equivalent to the relevant costs in circumstances where—

- (a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator; and
- (b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker, but not otherwise.

(7) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or protective work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

54. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 53) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this this Schedule (including any claim relating to those relevant costs).

55. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

56. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans and the land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

57. 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.

58. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under [article 9 \(consent to transfer benefit of the Order\)](#) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

59. The undertaker must no later than 28 days from the date that the documents submitted to and certified by the Secretary of State in accordance with [article 40 \(certification of plans etc.\)](#) are certified by the Secretary of State, provide a set of those documents to Network Rail in the form of a computer disc with read only memory.

## PART 6

### FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION

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

#### Interpretation

61. In this Part of this Schedule—

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

“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 electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in [article 2](#) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development;

“commence” has the same meaning as in [article 2](#) of this Order and commencement shall be construed to have the same meaning save that for the purposes of this part of the Schedule only the term commence and commencement shall include any below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“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 undertaker to submit for National Grid’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;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

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

“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;

“undertaker” has the same meaning as in article 2 of this Order; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 66(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 66(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

### **On Street Apparatus**

62. Except for paragraphs 63 (apparatus of National Grid in stopped up streets), 68 (retained apparatus), 69 (expenses) and 70 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do 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 stopped up streets**

63.—(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 14 (permanent 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 undertaker will grant to National Grid, or will procure the granting to 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 but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 65.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary prohibition or restriction of use of streets and public rights of way), National Grid will be at liberty at all times to take all necessary access across any such stopped up highway 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 stopping up or diversion was in that street.

### Protective works to buildings

64.—(1) The undertaker, in the case of the powers conferred by article 20 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to paragraph 63(2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reasons of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

### Acquisition of land

65.—(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 appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between the undertaker and National Grid) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such part of the authorised development.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of 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 and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 67 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under paragraph 64(1).

(5) For the avoidance of doubt, 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 may not appropriate or acquire National Grid's freehold interest (or any other interest) in plots 16/03 and 16/04.

## **Removal of apparatus**

**66.—**(1) If, in the exercise of the agreement reached in accordance with paragraph 65 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 must 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 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 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 must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 67(1)) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by 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 or land secured by 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 or land secured by 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 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 prior 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**

**67.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection 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 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 otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under paragraph 66(1) 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 will be referred to arbitration in accordance with paragraph 74 (arbitration) of this Part of this Schedule 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 42(3) (procedures in relation to certain approvals etc.) of the Order shall apply.

## Retained apparatus

68.—(1) Not less than 56 days before the commencement of any specified works, the removal of which has not been required by the undertaker under paragraph (65(2)) or otherwise and to which sub-paragraphs (2)(a) or (2)(b) applies the undertaker must submit to National Grid a plan of the works to be executed and seek from the undertaker 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—

- (a) 15 metres measured in any direction of any apparatus; or
- (b) involve embankment works within 15 metres of any apparatus.

the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (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) ~~substitution for existing~~ the position of all apparatus;~~or~~

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

~~(5) For the purposes of paragraph (4)—~~

~~(a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing~~

- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;~~and~~
- (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) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (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 ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraph (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 (2) or (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and,

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraph (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 apparatus 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 to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or 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-paragraph (6) 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 will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any part of the authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (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 60 to 62 and 65 to 67 apply as if the removal of the apparatus had been required by the undertaker under paragraph 65(2)).

(10) Nothing in this paragraph precludes 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 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.

(11) The undertaker will 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 must—

(a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph 71 at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with the National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

### **Expenses**

69.—(1) Subject to the following provisions of this paragraph, the undertaker must 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 or alternative apparatus which may be required in consequence of the execution of the authorised development as referred to in this Part of this Schedule including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;

- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 65(3); and/or
- (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (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 Part of this Schedule.

(2) There will 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 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, is not determined by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.) 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) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will 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 will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) ~~(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 will be treated as if it also had been agreed or had been so determined.

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~~(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4))~~

(5) shall, An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, 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~~ 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.

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

~~(a) the allowable costs of the relocation works shall be determined in accordance with section~~

~~85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and  
(b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.~~

~~(8) In this article—~~

~~“apparatus” has the same meaning as in Part 3 of the 1991 Act;~~

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

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

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

~~43.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 41 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall 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) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 41, any person who is—~~

~~(a) the owner or occupier of premises the drains of which communicated with that sewer; or~~

~~(b) the owner of a private sewer which communicated with that sewer;~~

~~shall 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 shall not have effect in relation to apparatus to which article 42 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.~~

~~(4) In this article—~~

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

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

~~(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.~~

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## **Miscellaneous and general**

### **Deemed consent under section 34 of the Coast Protection Act 1949**

~~44. The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949(a) to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.~~

### **Deemed licence under Part 2 of the Food and Environment Protection Act 1985**

~~45. The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985(b) to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.~~

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

~~46.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, 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 project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised project.~~

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

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

### **Trees subject to tree preservation orders**

~~47.—(1) The undertaker may fell or lop any tree described in Schedule J and identified on the *[insert name]* plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—~~

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

~~(2) In carrying out any activity authorised by paragraph (1) —~~

~~(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and~~

~~(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.~~

~~(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.~~

~~(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.~~

~~(a) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other amendments to the 1949 Act which are not relevant to this Order.~~

~~(b) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this Order.~~

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### **Railway and navigation undertakings**

~~48.—(1) Subject to the following provisions of this article, the undertaker may not under article 10 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act) —~~

~~(a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or~~

~~(b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person;~~

~~except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.~~

~~(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.~~

~~(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.~~

~~(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.~~

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

~~49.—(1) This article applies to —~~

~~(a) any agreement for leasing to any person the whole or any part of the authorised project 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 project, 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 shall prejudice the operation of any agreement to which this article applies.~~

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

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

~~(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or~~

~~(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.~~

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

~~50. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).~~



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

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

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or

(ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25;

or

(ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall 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 project.

### **Protection of interests**

**52.** Schedule L to this Order has effect.

### **Saving for Trinity House**

**53.** Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

### **Disapplication of regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994**

**54.**—(1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994(e) (general development orders) (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works authorised by article 7 (subsidiary works) and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order

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

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

(c) 1994/2716 (“the Habitats Regulations”). Relevant amendments were made by SI 2007/1843, SSI 2007/80, and SSI 2007/349. The Habitats Regulations make provision for the purpose of implementing, for Great Britain, Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (OJ No. L 206, 22.07.92, p.7) as last amended by Council Directive 2006/105/EC of 20 November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania (OJ No. L 363, 20.12.06, p.368).

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1995 for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

(2) Paragraph (1) does not apply if and to the extent that those works—

(a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 of the Habitats Regulations (assessment of implications for European Site) in connection with the making of this Order; and

(b) are not the subject of a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

### **Planning, etc. jurisdiction**

~~55.—(1) During the period beginning with the date when this Order comes into force and beginning on the accretion date, the area within the Order limits shall, for the purposes of the Control of Pollution Act 1974(a) and the Town and Country Planning Act 1990(b), be annexed to and incorporated with the district of [insert name of relevant planning authority].~~

~~(2) In this article “accretion date” means the date when the works authorised by this Order have been completed or, if earlier, the date when the benefits and rights granted by this Order cease to have effect pursuant to article 4 (period for completion of work).~~

#### ~~Certification of plans etc~~

~~56.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision maker copies of—~~

~~(a) the book of reference;~~

~~(b) the land plan;~~

~~(c) the rights plan;~~

~~(d) the works plan;~~

~~(e) the sections; and~~

~~(f) any other plans or documents referred to in this Order;~~

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

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

#### ~~Arbitration~~

~~57. Any difference under any provision of this Order, unless otherwise provided for, shall 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 [insert appropriate body].~~

### ~~Schedule A~~

#### ~~AUTHORISED PROJECT~~

##### ~~Part 1~~

##### ~~AUTHORISED DEVELOPMENT~~

~~[NOTE: This Part should describe as fully as possible the elements of the proposed project (including any associated development), which are development for the purposes of section 32 of~~

~~(a) 1974 c.40.~~

~~(b) 1990 c.8.~~

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~~the 2008 Act, for which development consent is sought. It should not include any elements of development which would be authorised by specific provisions in the Order.]~~

##### ~~Part 2~~

##### ~~ANCILLARY WORKS~~

~~[NOTE: This Part should describe as fully as possible the ancillary works for which consent is sought and which are not development within the meaning of section 32 of the 2008 Act and which are not be the subject of a separate provision [article] in this Order.]~~

### ~~Schedule B~~

#### ~~STREETS SUBJECT TO STREET WORKS~~

~~(1)(2)~~

~~Area Street subject to street works~~

### ~~Schedule C~~

#### ~~STREETS TO BE STOPPED UP~~

##### ~~Part 1~~

##### ~~STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED~~

~~(1)(2)(3)(4)~~

~~Area Street to be stopped~~

~~up~~

~~Extent of stopping up New street to be substituted~~

##### ~~Part 2~~

##### ~~STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED~~

~~(1)(2)(3)~~

*Area Street to be stopped up Extent of stopping up*

#### **Schedule D**

#### **~~STREETS TO BE TEMPORARILY STOPPED UP~~**

*(1)(2)(3)*

*Area Street to be temporarily  
stopped up*

*Extent of temporary stopping  
up*

#### **Schedule E**

#### **~~ACCESS TO WORKS~~**

*(1)(2)*

*Area Description of access*

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#### **Schedule F**

#### **~~LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE MAY BE ACQUIRED~~**

*(1)(2)*

*Area Number of and shown on land plan*

#### **Schedule G**

#### **~~LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN~~**

*(1)(2)(3)(4)*

*Area Number of land shown  
on land plan*

*Purpose for which  
temporary possession  
may be taken*

*Relevant part of the  
Authorised project*

#### **Schedule H**

#### **~~DEEMED CONSENT UNDER COAST PROTECTION ACT 1949~~**

*{Insert details of deemed consent}*

#### **Schedule I**

#### **~~DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION ACT 1985~~**

*{Insert details of deemed licence}*

#### **Schedule J**

#### **~~TREES SUBJECT TO TREE PRESERVATION ORDERS~~**

*(1)(2)(3)*

*Type of tree Number[reference] of tree  
shown on land plan*

*Work to be carried out*

#### **Schedule K**

#### **~~LIMITS OF HARBOUR~~**

*{Insert details of limits of harbour}*

#### **Schedule L**

#### **~~PROTECTIVE PROVISIONS~~**

*{Insert details of protective provisions}*

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#### **~~SCHEDULE 4~~ Article 2**

**~~Model provisions in respect of requirements~~**

#### **~~CONTENTS~~**

**~~1. Interpretation~~**

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  - ~~8. Implementation and maintenance of landscaping~~
  - ~~9. Trees~~
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- Interpretation**

### Indemnity

70.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any part 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 Part of 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 the authorised development) 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 will—

- (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 other than arising from any default of National Grid.

(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 or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid 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 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 part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of a person with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 9 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any part of the authorised development yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 70.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 70 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 70 for claims reasonably incurred by National Grid.

### **Enactments and agreements**

71. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, 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**

72.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 65(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 67, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt where National Grid’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by National Grid, it must not be unreasonably withheld or delayed.

### **Access**

73. If in consequence of the agreement reached in accordance with paragraph 65(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must 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**

74. Save for differences or disputes arising under paragraphs 65(2), 65(4), 66(1) and 67 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.)

### **Notices**

75. The plans submitted to National Grid by the undertaker pursuant to paragraph 67(1) must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker.

DOCUMENTS AND PLANS TO BE CERTIFIED

<u>(1)</u> <i>Document name</i>	<u>(2)</u> <i>Document reference</i>	<u>(3)</u> <i>Revision number</i>	<u>(4)</u> <i>Date</i>
<a href="#"><u>access and public rights of way plans</u></a>	<a href="#"><u>2.3</u></a> ( <a href="#"><u>key plan and sheets 1 to 16</u></a> )	<a href="#"><u>Rev.1</u></a>	<a href="#"><u>May 2019</u></a>
<a href="#"><u>book of reference</u></a>	<a href="#"><u>4.3</u></a>	<a href="#"><u>Rev. 1</u></a>	<a href="#"><u>May 2019</u></a>
<a href="#"><u>CHP statement</u></a>	<a href="#"><u>5.4</u></a>	<a href="#"><u>Rev. 0</u></a>	<a href="#"><u>November 2018</u></a>
	<a href="#"><u>5.4.1 (CHP supplementary report)</u></a>	<a href="#"><u>Rev. 0</u></a>	<a href="#"><u>June 2019</u></a>
<a href="#"><u>design principles</u></a>	<a href="#"><u>7.4</u></a>	<a href="#"><u>Rev. 0</u></a>	<a href="#"><u>November 2018</u></a>
<a href="#"><u>environmental statement</u></a>	<a href="#"><u>environmental statement 6.1</u></a> ( <a href="#"><u>excluding chapters 3, 5, 6, 7, 9, 11, 12, 13, 14 and 18</u></a> )	<a href="#"><u>Rev. 0</u></a>	<a href="#"><u>November 2018</u></a>
	<a href="#"><u>environmental statement 6.1</u></a> ( <a href="#"><u>chapters 3, 5, 6, 7, 9, 11, 12, 13, 14 and 18</u></a> )	<a href="#"><u>Rev. 1</u></a>	<a href="#"><u>May 2019</u></a>
	<a href="#"><u>environmental statement 6.2</u></a> ( <a href="#"><u>excluding Figure 7.5</u></a> )	<a href="#"><u>Rev. 0</u></a>	<a href="#"><u>November 2018</u></a>
	<a href="#"><u>environmental statement 6.2 (Figure 7.5)</u></a>	<a href="#"><u>Rev. 2</u></a>	<a href="#"><u>June 2019</u></a>
	<a href="#"><u>environmental statement 6.3</u></a> ( <a href="#"><u>excluding appendix J (network traffic flows and distribution) to appendix B.1, appendix L (outline construction traffic management plan) to appendix B1, appendix C.1 (traffic modelling), C.2 (stack modelling), appendix C.3 (human health risk assessment)</u></a> )	<a href="#"><u>Rev. 0</u></a>	<a href="#"><u>November 2018</u></a>
	<a href="#"><u>environmental statement 6.3</u></a> ( <a href="#"><u>appendix J (network traffic flows and distribution) to appendix B.1, appendix C.1 (traffic modelling), C.2 (stack modelling),</u></a>	<a href="#"><u>Rev. 1</u></a>	<a href="#"><u>May 2019</u></a>

	<a href="#">appendix C.3 (human health risk assessment))</a>		
	<a href="#">environmental statement 6.3 (appendix L (outline construction traffic management plan) to appendix B.1</a>	<a href="#">Rev. 2</a>	<a href="#">June 2019</a>
	<a href="#">environmental statement 6.4</a>	<a href="#">Rev. 0</a>	<a href="#">November 2018</a>
	<a href="#">environmental statement 6.5</a>	<a href="#">Rev. 1</a>	<a href="#">May 2019</a>
	<a href="#">environmental statement supplemental report 6.6</a>	<a href="#">Rev. 0</a>	<a href="#">May 2019</a>
<a href="#">flood risk assessment</a>	<a href="#">5.2</a>	<a href="#">Rev. 0</a>	<a href="#">November 2018</a>
<a href="#">ERAPA drawing</a>	<a href="#">appendix B of 8.01.03</a>	<a href="#">Rev. 0</a>	<a href="#">May 2019</a>
<a href="#">land plans</a>	<a href="#">2.1</a>	<a href="#">Rev. 1</a>	<a href="#">May 2019</a>
<a href="#">outline biodiversity and landscape mitigation strategy</a>	<a href="#">7.6</a>	<a href="#">Rev. 1</a>	<a href="#">June 2019</a>
<a href="#">outline code of construction practice</a>	<a href="#">7.5</a>	<a href="#">Rev. 2</a>	<a href="#">June 2019</a>
<a href="#">outline lighting strategy</a>	<a href="#">appendix K.3 of 6.3</a>	<a href="#">Rev. 0</a>	<a href="#">November 2018</a>
<a href="#">transport assessment</a>	<a href="#">appendix B.1 of 6.3 (excluding appendix J and appendix L)</a>	<a href="#">Rev. 0</a>	<a href="#">November 2018</a>
	<a href="#">appendix J to appendix B.1 of 6.3</a>	<a href="#">Rev. 1</a>	<a href="#">May 2019</a>
	<a href="#">appendix L to appendix B.1 of 6.3</a>	<a href="#">Rev. 2</a>	<a href="#">June 2019</a>
<a href="#">works plans</a>	<a href="#">2.2</a>	<a href="#">Rev. 1</a>	<a href="#">May 2019</a>



PROCEDURE IN RELATION TO CERTAIN APPROVALS ETC.Interpretation

~~1.1.~~ In this Schedule—

~~“the 1990 Act” means the Town and Country Planning Act 1990;~~

~~“the 2008 Act” means the Planning Act 2008;~~

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~~“authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;~~

~~“the authorised project” means the authorised development and the ancillary works authorised by this Order;~~

~~“the code of construction practice” means the code of construction practice agreed by *[insert relevant body]* on *[insert date]*;~~

~~“the environmental document” means the document certified as the environmental document by the decision maker for the purposes of this Order;~~

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

~~“the Order limits” means the limits shown on the works plan within which the authorised project may be carried out;~~

~~“relevant planning authority” means—~~

~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii) a National Park Authority;~~

~~(iii) the Broads Authority; and~~

~~(iv) the Greater London Authority if the land to which ~~the provisions of this Order or~~ requirements apply is situated in Greater London;~~

~~“stage” means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the Commission pursuant to requirement 3 (stages of authorised development).~~

**Time limits**

~~2. The authorised development must be begun within *[insert number]* years of the date of this Order.~~

**Stages of authorised development**

~~3. No authorised development shall commence until a written scheme setting out all the stages~~

~~“the appeal parties” means the relevant authority, the undertaker and any requirement consultees;~~

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

~~of the authorised development has, after consultation with—“relevant authority” means the relevant planning authority and, 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; and~~

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

Applications made under requirements

~~2.—(1) Subject to article 42(2), where an application has been made to the relevant authority for any consent, agreement or approval required or contemplated by any provisions of this Order~~

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(a) 1971 c.80

(including consent, agreement or approval in respect of part of a requirement) the relevant authority must give notice to the undertaker of its decision on the application within a period of 9 weeks beginning with—

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

(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 an application has been made to the relevant authority for any consent, agreement or approval required by a requirement included in this Order, and—

- (a) the relevant authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

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

### **Further information and consultation**

~~3.—~~(1) In relation to any application to which this Schedule applies, the relevant authority has the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

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

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

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

(5) Where further information is requested under this paragraph 3 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 2(1)(b), paragraph 2(3) and paragraph 3.

### **Appeals**

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

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 2(3)) an application for any consent, agreement or approval required or contemplated by any of the provisions of this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 3 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) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where paragraph 2(3) applies) expiry of the decision period as determined under paragraph 2(1);
- (b) 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 appeal parties;
- (c) as soon as is practicable following receipt of the appeal documentation, the Secretary of State is to appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention must be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (d) the relevant authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d); and
- (f) the appointed person must decide the appeal and notify the appeal parties of the decision, with reasons, as soon as reasonably practicable and in any event within thirty business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e).

(3) The appointment of the person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, within five business days of his appointment, notify the appeal parties in writing specifying the further information required, the appeal part from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) is to be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(d) to (2)(f).

(6) 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 the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or set by the appointed person, under this paragraph.

(8) The appointed person may proceed to a decision even though no written representations have been made within the prescribed 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.

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

(10) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the Order or for the purpose of Schedule 2 (Requirements) 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.

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

(12) Save where a direction is given pursuant to sub-paragraph (13) 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.

(13) 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.

#### **Application to protective provisions**

5. Nothing in this Schedule applies to any consent, agreement or approval required or contemplated by Schedule 10 (protective provisions) or article 20(6) (protective work to buildings).

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 article 42(3) (procedures in relation to certain approvals etc.).

2. The Arbitration will 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 will be either—

- (a) the date the Arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) 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 must provide both the Respondent and the Arbitrator with—

- (a) 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;
- (b) 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 must provide the Claimant and the Arbitrator with—

- (a) 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;
- (b) 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;
- (c) 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—

- (a) 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;

- (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
- (c) any expert report in response to the Respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent;
- (e) its written submissions in response to the legal and factual issues involved.

## **Procedure**

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

10. The Arbitrator must 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 will direct a date and venue which he considers is fair and reasonable in all the circumstances. The date for the hearing must 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 may 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—

- (a) At least 28 days before a hearing, the Arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) 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
- (c) The form and content of a joint report must 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 must 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 must include reasons. The parties must accept that the extent to which reasons are given must 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 will be no discovery or disclosure, except that the Arbitrator will 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 must 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—

- (a) 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;
- (b) 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 will 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 will fix the costs of the arbitration and decide which of the parties must bear them or in what proportion they will 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 must take place in private.

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

~~highway authority, been submitted to and approved by the Commission.~~

#### **~~Detailed design approval~~**

~~4. No [stage of the] authorised development shall commence until [for that stage] written details of the following have, after consultation with the relevant planning authority, been submitted to and approved by the Commission—~~

~~for~~

~~5. No [stage of the] authorised development shall commence until details of the layout, scale and external appearance of the following elements of the authorised development [within that stage]~~

~~have, after consultation with the relevant planning authority, been submitted to and approved by the Commission]~~

~~6. The authorised development must be carried out in accordance with the approved details.~~

#### **Provision of landscaping**

~~7. No [stage of the] authorised development shall until commence a written landscaping scheme [for that stage] has, after consultation with the relevant planning authority, been submitted to and~~  
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~~approved by the Commission. The landscaping scheme must include details of all proposed hard and soft landscaping works, including —~~

- ~~(a) location, number, species, size and planting density of any proposed planting;~~
- ~~(b) cultivation, importing of materials and other operations to ensure plant establishment;~~
- ~~(c) proposed finished ground levels;~~
- ~~(d) hard surfacing materials;~~
- ~~(e) vehicular and pedestrian access, parking and circulation areas;~~
- ~~(f) minor structures, such as furniture, refuse or other storage units, signs and lighting;~~
- ~~(g) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;~~
- ~~(h) details of existing trees to be retained, with measures for their protection during the construction period;~~
- ~~(i) retained historic landscape features and proposals for restoration, where relevant; and~~
- ~~(j) implementation timetables for all landscaping works.~~

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

~~8.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.~~

~~(2) The landscaping works must be carried out in accordance with implementation timetables approved under requirement 6.~~

~~(3) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the Commission, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the Commission.~~

#### **Trees**

~~9.—(1) No [stage of the] authorised development shall commence until written details of any proposed tree planting and the proposed times of planting have, after consultation with the relevant planning authority, been approved in writing by the Commission; and all tree planting shall be carried out in accordance with those details and at those times.~~

~~(2) If within a period of [two years] beginning with the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, [or becomes, in the opinion of the Commission, seriously damaged or defective,] another tree of the same species and size as that originally planted shall be planted at the same place, unless the Commission gives its written consent to a variation.~~

#### **Highway accesses**

~~10.—(1) No [stage of the] authorised development shall commence until [for that stage,] written details of the siting, design and layout 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, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

~~(2) The highway accesses must be constructed in accordance with the approved details.~~

~~(3) No [stage of the] authorised development shall be begun until [for that stage,] a written Access Management Scheme has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

~~(4) The Access Management Scheme must be carried out in accordance with the approved~~  
details.

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

~~11.—(1) No [stage of the] authorised development shall commence that would affect *[insert details of relevant right of way]* until a written implementation plan and specification for the~~



making up of an alternative right of way has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.  
(2) The alternative *[insert details of relevant right of way]* shall be implemented in accordance with the approved plan and specification.

#### **Fencing—special roads**

**12.**—(1) No *[stage of the]* authorised development shall commence until written details of the design and construction of any boundary fencing for special roads have, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.

(2) The authorised development shall be carried out in accordance with the approved design and construction.

(3) “Special road” has the same meaning as in section 329 of the Highways Act 1980.

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

**13.**—(1) No *[stage of the]* authorised development shall commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure *[for that stage]* have, after consultation with the relevant planning authority, been submitted to and approved by the Commission.

(2) The *[insert description]*, and any construction sites, must remain securely fenced at all times during construction of the authorised development.

(3) Any temporary fencing must be removed on completion of the authorised development.

(4) Any approved permanent fencing of the new *[insert description]* must be completed before the *[insert description]* is brought into use.

#### **Surface water drainage**

**14.**—(1) No *[stage of the]* authorised development shall commence until *[for that stage,]* written details of the surface and foul water drainage system (including means of pollution control) have, after consultation with the relevant planning authority and the sewerage and drainage authority, been submitted to and approved by the Commission.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details.

#### **Contaminated land and groundwater**

**15.**—(1) No *[stage of the]* authorised development shall commence until a written scheme *[applicable to that stage,]* to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the relevant planning authority and the Environment Agency, been submitted to and approved by the Commission.

(2) The scheme shall include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and 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) Remediation must be carried out in accordance with the approved scheme.

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#### **Archaeology**

**16.**—(1) No *[stage of the]* authorised development shall commence until *[for that stage,]* a written scheme for the investigation of areas of archaeological interest *[as identified in section [ ] of the environmental document]* has, after consultation with the relevant planning authority, been submitted to and approved by the Commission.

(2) The scheme shall identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the Commission.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

#### **Ecological management plan**

**17.**—(1) No *[stage of the]* authorised development shall commence until a written ecological management plan *[for that stage]* reflecting the survey results and ecological mitigation and

~~enhancement measures included in the environmental document, after consultation with the relevant planning authority, shall be submitted to and approved by the Commission.~~

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

#### **Code of construction practice**

~~18. Construction works shall be carried out in accordance with the agreed code of construction practice, unless otherwise agreed by the Commission, after consultation with relevant planning authority.~~

~~for~~

~~19. —(1) No [stage of the] authorised development shall commence until a code of construction practice shall, after consultation with the relevant planning authority, be submitted to and approved by the Commission.~~

~~(2) All construction works shall be undertaken in accordance with the approved code, unless otherwise agreed by the Commission.]~~

~~[Note: The code should specify measures designed to minimise the impacts of construction works, such as means of minimising pollution from dust, noise, vibration and lighting, wheel-cleansing facilities, routes for construction traffic, working hours etc. To the extent that it does not, or does not do so adequately, separate conditions are likely to be required, some of which are indicated below].~~

#### **Design of roads**

~~20. —(1) No [stage of the] authorised development consisting of the construction or alteration of a street which is a trunk road or including any traffic management and control measures shall commence until written details of the design of the street shall, after consultation with the Highways Agency, be submitted to and approved by the Commission.~~

~~(2) The [authorised development] construction or alteration of the street or the taking of traffic management and control measures shall be carried out in accordance with the approved design.~~

#### **External lighting**

~~21. No [stage of the] authorised development, shall commence until written details of any external lighting to be installed at any of the construction sites [within that stage], including measures to prevent light spillage, shall, after consultation with the relevant planning authority and~~

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the highway authority, be submitted to and approved by the Commission; and any approved means of lighting must subsequently be installed and retained for the duration of the construction period.~~

#### **Construction traffic**

~~22. —(1) No [stage of the] authorised development shall commence until written details of the preferred route to be used by construction traffic shall, after consultation with the relevant planning authority and the highway authority, be submitted to and approved by the Commission.~~

~~(2) Notices shall be erected and maintained throughout the period of construction at every construction site exit, indicating to drivers the route agreed by the Commission for traffic entering and leaving the site.~~

#### **Control of noise during construction and maintenance**

~~23. —(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for noise management during construction and maintenance [of that stage] has been submitted to and approved by the Commission.~~

~~(2) The scheme shall set out the particulars of —~~

~~(a) the works, and the method by which they are to be carried out;~~

~~(b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and~~

~~(c) a scheme for monitoring the noise during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.~~

~~(3) The approved noise management scheme must be implemented before and maintained during construction and maintenance of the [relevant stage of the] authorised development.~~

~~(4) The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.~~

#### **Construction hours**

~~24. —(1) Construction work shall not take place other than between [0800 and 1800 hours on weekdays and 0800 and 1300 hours on Saturdays, excluding public holidays], unless otherwise~~

agreed by the Commission.

(2) Nothing in paragraph (1) precludes a start-up period from [0730 to 0800] and a shut-down period from [1800 to 1830] on weekdays (excluding public holidays).

#### **Control of noise during operational phase**

**25.**—(1) No authorised development shall commence operation until, after consultation with the relevant planning authority, a written scheme for noise management including monitoring and attenuation for the use of the authorised project has been submitted to and approved by the Commission.

(2) The noise management scheme must be implemented as approved and maintained for the duration of use of the authorised project.

#### **Control of odour emissions**

**26.**—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of odour emissions has been submitted to and approved by the Commission.

(2) The approved scheme for the management and mitigation of odour emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.

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#### **Control of artificial light emissions**

**27.**—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of artificial light emissions has been submitted to and approved by the Commission.

(2) The approved scheme for the management and mitigation of artificial light emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.

#### **Control of dust emissions**

**28.**—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of dust emissions has been submitted to and approved by the Commission.

(2) The approved scheme for the management and mitigation of dust emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.

#### **Control of smoke emissions**

**29.**—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of smoke emissions has been submitted to and approved by the Commission.

(2) The approved scheme for the management and mitigation of smoke emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.

#### **Control of steam emissions**

**30.**—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of steam emissions has been submitted to and approved by the Commission.

(2) The approved scheme for the management and mitigation of steam emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.

#### **Control of insects**

**31.**—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme to ensure the prevention of infestation or emanation of insects from the authorised development has been submitted to and approved by the Commission.

(2) The approved scheme for the prevention of infestation or emanation of insects must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.

(3) For the purposes of this requirement, “insects” excludes insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981(a) (animals which are protected), unless they are included in respect of section 9(5) of that Act only.

(a) 1981 c.69. Relevant amendments were made by SI 1988/288, 1989/906, 1992/2350, 1998/878, 2007/1843, 2008/2172, SSI

### **Accumulations and deposits**

~~32.—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management of any accumulations [or] and deposits whose effects may be harmful or visible or otherwise noticeable from outside the Order limits has been submitted to and approved by the Commission.~~

~~(2) The approved scheme for the management of accumulations and deposits must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

### **Travel plan**

~~33.—(1) No [stage of the] of the authorised development shall be begun until, after consultation with the relevant planning authority and the highway authority, a travel plan [for the contractor's workforce], which must include details of the expected means of travel to and from [the authorised [project]][the construction site] and any parking to be provided, has been submitted to and approved by the Commission.~~

~~(2) No part of the authorised project shall be brought into use until, after consultation with the relevant planning authority and the highway authority, a travel plan, which must include details of the expected means of travel to and from the authorised project and any parking to be provided, has been submitted to and approved by the Commission.~~

~~(3) The plan approved under paragraph (1) must be implemented during the construction of the authorised development and the plan approved under paragraph (2) must be implemented [within one month of the authorised project being brought into use] and shall continue to be implemented for as long as the authorised project is used.~~

### **European protected species**

~~34.—(1) No [stage of the] authorised development shall commence until [further] survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by the authorised development or in any of the trees to be lopped or felled or buildings to be demolished during [that stage of] **the authorised development.**~~

~~(2) Where a European protected species is shown to be present, no authorised development [of that stage] shall be begun until, after consultation with the relevant planning authority, Natural England and the Secretary of State for the Environment, Food and Rural Affairs, a scheme of protection and mitigation measures has been submitted to and approved by the Commission; and the authorised development shall be carried out in accordance with the approved scheme.~~

~~(3) “European protected species” has the same meaning as in regulations 38 and 42 of the Conservation (Natural Habitats, &c.) Regulations 1994(a).~~

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

~~35. Any land within the Order limits which is used temporarily for construction must be reinstated to its former condition, or such condition as the Commission may approve, within [six] months of completion of authorised development.~~

### **Requirement for written approval**

~~36. Where under any of the above requirements the approval or agreement of the Commission or another person is required, that approval or agreement must be given in writing.~~

~~(a) S.I. 1994/2716.~~

### **Amendments to approved details**

~~37. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the Commission, the approved details shall be taken to include any amendments that may subsequently be approved in writing by the Commission.~~

### **Requirement for consent of Civil Aviation Authority and Ministry of Defence**

~~38. No [stage of the] authorised development shall commence until [for that stage], after consultation with the Civil Aviation Authority and the Ministry of Defence, written details for the operation of the authorised project [and its effect on radar] have been submitted to and agreed by the Commission.~~

~~[Note: This requirement is only relevant in the context of authorised development that involves a wind farm.]~~

## EXPLANATORY NOTE

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

The Planning Act 2008 (“the 2008 Act”) established the Infrastructure Planning Commission (“the Commission”) and provides for the granting of development consent for certain types of nationally significant infrastructure project. Development consent is granted in the form of an Order made by the Commission or the Secretary of State.

This Order prescribes model provisions for inclusion in the draft Order, which the Infrastructure Planning (Applications and Procedure) Regulations 2009 (S.I. 2009/2264) require to accompany an application for an order granting development consent. These model provisions may also be included in orders made by the Commission under section 114 of the 2008 Act, which grant development consent for nationally significant infrastructure projects. The Commission must have regard to the prescribed model provisions when making an order granting development consent but is not compelled to use them: the Commission may omit them entirely from orders if the model provisions are not appropriate or may adapt them to meet specific requirements.

Schedule 1 sets out general model provisions, which may be included in orders relating to all nationally significant infrastructure projects. These model provisions include an interpretation provision, which sets out general definitions, provisions in respect of street works, stopping up of streets, agreements with street authorities, access to works, the compulsory purchase of land and rights over the land or lesser interests in land and the extinguishment or suspension of rights over land.

Schedule 2 sets out model provisions relevant to orders granting development consent for railways. These include provisions in respect of the incorporation of the Railways Clauses Consolidation Act 1845 (c.20), level crossings and the operation and use of railways.

Schedule 3 sets out model provisions relevant to orders granting development consent for harbours. These include an interpretation provision, which sets out definitions relevant to harbours, provisions in respect of the incorporation of the Harbours, Docks and Piers Clauses Act 1847 (c.27), the limits of the harbour, tidal works and the right to dredge.

Schedule 4 sets out model provisions in respect of the requirements which can be included in orders granting development consent under section 120 of the 2008 Act.

An Impact Assessment has not been prepared for this Order as there is no additional impact on business, charities or the public sector beyond that examined in the Impact Assessment that accompanied the Planning Bill when it was introduced in Parliament on 27<sup>th</sup> November 2007. That Impact Assessment can be found on the Communities and Local Government website (<http://www.communities.gov.uk>).

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### **S.I. 2009 No. 2265 The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009**

[This Order authorises Cory Environmental Holdings Limited and Riverside Energy Park 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 40 of this Order \(certification of plans etc.\) may be inspected free of charge during working hours at London Borough of Bexley, Civic Offices, 2 Watling Street, Bexleyheath, Kent DA6 7AT.](#)