

# REPORT

## **Boston Alternative Energy Facility**

Draft Development Consent Order

Client: Alternative Use Boston Projects Ltd.

Planning Inspectorate EN010095

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**202[ ] No. 0000**

**INFRASTRUCTURE PLANNING**

The Boston Alternative Energy Facility Order 202[ ]

*Made* - - - - 202[ ]

*Coming into force* - - 202[ ]

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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 in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b).

[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(c). The Examining Authority has submitted a report and recommendation to the Secretary of State under section 83(d) of the 2008 Act.]

[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(e) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 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(f) of the 2008 Act, the Secretary of State has applied the relevant tests and is satisfied that they have been met.

Accordingly, the Secretary of State, in exercise of the powers in sections 114, 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 Boston Alternative Energy Facility Order 202[ ] and comes into force on [ ] 202[ ].

### Interpretation

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

“the 1961 Act” means the Land Compensation Act 1961(g);

“the 1965 Act” means the Compulsory Purchase Act 1965(h);

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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).

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, 2014/469, 2014/2381, 2015/377, 2015/1682, 2017/524, 2017/572 and S.I. 2018/378.

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

(d) 2008 c. 29. Section 83 was amended by paragraphs 35(2) and 35(3) of Schedule 13(1) and paragraph 1 of Schedule 25(20) to the Localism Act 2011 (c. 20).

(e) S.I. 2017/572.

(f) 2008 c. 29. 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 paragraphs 64(2) of Schedule 13(1) to the Localism Act 2011 (c. 20).

(g) 1961 c. 33.

(h) 1965 c. 56.

“the 1980 Act” means the Highways Act 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(d);

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

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

“access and rights of way plan” means the plan of that description certified by the Secretary of State as the access and rights of way plan for the purposes of this Order under article 48 (certification of documents, etc.);

“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 (street works in England and Wales) of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order or any part of it which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act;

“book of reference” means the document of that description certified by the Secretary of State as the book of reference for the purposes of this Order under article 48 (certification of documents, etc.);

“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;

“Combined heat and power assessment” means the document of that description certified by the Secretary of State as the combined heat and power assessment for the purposes of this Order under article 48 (certification of documents, etc.);

“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 operations consisting of pre-construction ecological mitigation, archaeological investigations, 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, installation of construction compounds, erection of a footbridge, erection of temporary viewing structure, temporary car parking, erection of construction welfare facilities, erection of any temporary means of enclosure, the temporary display of site notices or contractors’ signage and notices and “commencement” and “commenced” 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;

“date of final commissioning” means the date on which the commissioning of Work No. 1A is completed as notified as such by the undertaker to the relevant planning authority pursuant to paragraph 20 of Schedule 2 (requirements);

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(a) 1980 c. 66.  
(b) 1981 c. 66.  
(c) 1984 c. 27.  
(d) 1990 c. 8.  
(e) 1991 c. 22.  
(f) 2008 c. 29.

“design and access statement” means the document of that description certified by the Secretary of State as the design and access statement for the purposes of this Order under article 48 (certification of documents, etc.);

“electronic transmission” means a communication transmitted—

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

(b) by other means provided it is in an electronic form;

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the Communications Act 2003(a);

“environmental statement” means the document of that description certified by the Secretary of State as the environmental statement for the purposes of this Order under article 48 (certification of documents, etc.);

“flood risk activity” has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016(b);

“flood risk assessment” means the document of that description certified by the Secretary of State as the flood risk assessment for the purposes of this Order under article 48 (certification of documents, etc.);

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

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

“indicative generating station plans” means the plans of that description certified by the Secretary of State as the indicative generating station plans for the purposes of this Order under article 48 (certification of documents, etc.);

“indicative wharf plans” means the plans of that description certified by the Secretary of State as the indicative wharf plans for the purposes of this Order under article 48 (certification of documents, etc.);

“land plan and Crown land plan” means the plans of that description certified by the Secretary of State as the land plan and Crown land plan for the purposes of this Order under article 48 (certification of documents, etc.);

“limits of deviation” means the limits of deviation referred to in article 7 (limits of deviation) shown for each numbered work on the works plans;

“maintain” in relation to the authorised development includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve to the extent that such works do not give rise to any materially new or materially different environmental effects than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“MMO” means the Marine Management Organisation;

“operational period” means the period from the date of final commissioning to the permanent cessation of the operation of Work No. 1A;

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

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

“outline code of construction practice” means the document of that description certified by the Secretary of State as the outline code of construction practice for the purposes of this Order under article 48 (certification of documents, etc.);

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(a) 2003 c. 21.

(b) S.I. 2016/1154.

“outline construction traffic management plan” means the document of that description certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order under article 48 (certification of documents, etc.);

“outline landscape and ecological mitigation strategy” means the document of that description certified by the Secretary of State as the outline landscape and ecological mitigation strategy for the purposes of this Order under article 48 (certification of documents, etc.);

“outline lighting strategy” means the document of that description certified by the Secretary of State as the outline lighting strategy for the purposes of this Order under article 48 (certification of documents, etc.);

“outline marine mammal mitigation protocol” means the document of that description certified by the Secretary of State as the outline marine mammal mitigation protocol for the purposes of this Order under article 48 (certification of documents, etc.);

“outline surface water drainage strategy” means the document of that description certified by the Secretary of State as the outline surface water drainage strategy for the purposes of this Order under article 48 (certification of documents, etc.);

“outline written scheme of investigation” means the document of that description certified by the Secretary of State as the outline written scheme of investigation for the purposes of this Order under article 48 (certification of documents, etc.);

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

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

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

“statutory nature conservation body” means the appropriate nature conservation body as defined in regulation 5 of the Conservation of Habitats and Species Regulations 2017(b);

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1)(c) (interpretation of Chapter I) of the Communications Act 2003;

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

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

“The Haven” means the part of the River Witham, known as The Haven;

“traffic authority” has the same meaning as in section 121A of the Road Traffic Regulation Act 1984;

“undertaker” means Alternative Use Boston Projects Limited (company number 11013830, whose registered office is at 26 Church Street, Bishop’s Stortford, Hertfordshire, England, CM23 2LY) or any other person who for the time being has the benefit of this Order in accordance with articles 8 and 9 of this Order;

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

“works plans” means the plans of that description certified by the Secretary of State as the works plans for the purposes of this Order under article 48 (certification of documents, etc.).

(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 airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land

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

(b) S.I. 2017/1012.

(c) 2003 c. 21.



which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in this Order land.

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

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

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the plans to which the reference applies.

(6) References in this Order to numbered works are references to the works numbered in Schedule 1.

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

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

(9) References to any statutory body in this Order include that body’s successor in respect of functions which are relevant to this Order.

(10) References in this Order to “part of the authorised development” are to be construed as references to stages, phases or elements of the authorised development.

## PART 2

### PRINCIPAL POWERS

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

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

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

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

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

#### **Maintenance of drainage works**

**5.**—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(a).

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

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

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(a) 1991 c. 59. The definition of “drainage” was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25).

(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.

### **Limits of deviation**

7.—(1) The authorised development is to be carried out and maintained within the limits of deviation shown and described on the works plan and in carrying out the authorised development the undertaker may—

- (a) deviate laterally within the limits of deviation for those works shown on the works plans to the extent the undertaker considers to be necessary or convenient;
- (b) to any extent downwards as may be necessary, convenient or expedient;
- (c) in respect of any boundary between the areas of two numbered works deviate laterally by 20 metres either side of the boundary as shown on the works plans, with the exception of any boundary with Work No. 1A(iv), any boundary with Work No. 2(d) and any boundary with Work No. 4,

except that these maximum limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation by the undertaker with the relevant planning authority, the relevant statutory nature conservation body and the Environment Agency to the extent that it relates to matters relevant to their functions, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) applies to an application to the Secretary of State for certification under paragraph (1) as though it were an approval required by a requirement under that Schedule.

### **Benefit of this Order**

8.—(1) Subject to paragraphs (2) and (3) and article 9 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of the owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

(3) Paragraph (1) does not apply to Work No. 3 for which the provisions of this Order have effect for the benefit of the undertaker, Harlaxton Engineering Services Limited and Western Power Distribution Plc.

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

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

- (a) transfer to another person (“the transferee”) all or any 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) grant to another person (“the lessee”), for a period agreed between the undertaker and the lessee, all or any 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 between the undertaker and the lessee.

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

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

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

- (a) the transferee or lessee holds a licence under section 6(a) (licences authorising supply, etc.) of the Electricity Act 1989; 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 the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting 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.

## PART 3 STREETS

### Street works

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

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

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(a) 1989 c. 29.

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

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

### **Application of the 1991 Act**

**11.—**(1) Works constructed or maintained under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (highway authorities, highways and related works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(a) (dual carriageways and roundabouts) of the 1980 Act or section 184(b) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 (street works in England and Wales) of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- section 56(c) (power to give directions as to timing);
- section 56A(d) (power to give directions as to placing of apparatus);
- section 58(e) (restrictions on works following substantial road works);
- section 58A(f) (restriction on works following substantial street works);
- section 73A(g) (power to require undertaker to re-surface street);
- section 73B(h) (power to specify timing etc. of re-surfacing);
- section 73C(i) (materials, workmanship and standard of re-surfacing);
- section 78A(j) (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A(k) (restrictions on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any alteration, diversion or restriction of use of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary closure, alteration, diversion and restriction of use of streets), whether or not the alteration, diversion or restriction constitutes street works within the meaning of that Act.

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- (a) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).
  - (b) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the New Roads and Street Works Act 1991.
  - (c) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
  - (d) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
  - (e) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004.
  - (f) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
  - (g) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
  - (h) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
  - (i) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
  - (j) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
  - (k) Schedule 3A was inserted by section 52(2) of, Schedule 4 to, the Traffic Management Act 2004.

(5) The provisions of the 1991 Act<sup>(a)</sup> referred to in paragraph (4) are—  
section 54<sup>(b)</sup> (advance notice of certain works), subject to paragraph (6);  
section 55<sup>(c)</sup> (notice of starting date of works), subject to paragraph (6);  
section 57<sup>(d)</sup> (notice of emergency works);  
section 59<sup>(e)</sup> (general duty of street authority to co-ordinate works);  
section 60 (general duty of undertakers to co-operate);  
section 68 (facilities to be afforded to street authority);  
section 69 (works likely to affect other apparatus in the street);  
section 75 (inspection fees);  
section 76 (liability for cost of temporary traffic regulation); and  
section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a closure, alteration, diversion or restriction (as the case may be) required in a case of emergency.

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

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

(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 within the Order limits and, without limiting the scope of this paragraph, the undertaker may—

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

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

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

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Temporary closure, alteration, diversion and restriction of use of streets**

**13.**—(1) The undertaker may, during and for the purposes of carrying out the authorised development, temporarily close, alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

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(a) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.

(b) As also amended by section 49(1) of the Traffic Management Act 2004.

(c) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(d) As also amended by section 52(3) of the Traffic Management Act 2004.

(e) As amended by section 42 of the Traffic Management Act 2004.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street temporarily closed, altered, diverted 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 pedestrians going to or from premises abutting a street affected by the temporary closure, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, alter, divert or restrict the use of the streets specified in column (1) of Schedule 5 (temporary closure, alteration, diversion and restriction of the use of streets) to the extent specified in column (2) of that Schedule.

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

- (a) any street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

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

(7) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of a higher standard than the temporarily closed, altered, diverted or restricted street specified in Schedule 5.

(8) If a street authority which receives a valid application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Permanent stopping up of streets**

**14.—**(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development, stop up the streets specified in column (1) of Schedule 6 (permanent stopping up of streets) to the extent specified and as described in column (2) of that Schedule.

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

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

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

(4) This article is subject to article 37 (apparatus and rights of statutory undertakers in stopped up streets).

### **Access to works**

**15.—**(1) The undertaker may, for the purposes of the authorised development—

- (a) form and layout the permanent means of access, or improve existing means of access in the location specified in Part 1 of Schedule 4 (streets subject to 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 alteration of layout); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a relevant planning authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Use of private roads**

**16.**—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction or maintenance of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

### **Agreements with street authorities**

**17.**—(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, whether or not over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of any street or the structure of any bridge or tunnel carrying a street over or under the authorised development;
- (d) any closure, alteration, diversion or restriction in the use of a street authorised by this Order;
- (e) the construction in the street of any of the authorised development; or
- (f) any such works as the parties may agree.

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

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Traffic regulation measures**

**18.**—(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, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—

- (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 four 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 seven 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 closure, alteration, diversion and restriction of use of streets) or paragraph (1) of this article has effect as if duly made by, as the case may be—

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

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

(4) In this article—

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

## PART 4

### SUPPLEMENTARY POWERS

#### **Powers in relation to relevant navigations or watercourses**

**19.—**(1) Subject to Schedule 8 (protective provisions), the undertaker may, for the purpose of or in connection with the carrying out and maintenance of the authorised development, regardless of any interference with any public or private rights—

- (a) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of a relevant navigation or watercourse;
- (b) remove or relocate any moorings so far as may be reasonably necessary for the purposes of carrying out and of maintaining the authorised development;
- (c) temporarily moor or anchor vessels and structures;
- (d) construct, place, maintain and remove temporary works and structures within the banks, bed, foreshores, waters and walls of a relevant navigation or watercourse; and
- (e) interfere with the navigation of the relevant navigation or watercourse,

in such manner and to such extent as may appear to it to be necessary or convenient.

(2) Except in the case of emergency, the undertaker must use reasonable endeavours to notify the owner of any mooring affected by the proposal to exercise the powers conferred by paragraph (1)(b) before the exercise of those powers.

(3) The undertaker must pay compensation to any person entitled to compensation under the 1961 Act who suffers any loss or damage from the exercise of the powers conferred by paragraph (1)(b).

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

(5) In this article “relevant navigation” means the part of the River Witham, known as The Haven.

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



## Discharge of water

**20.**—(1) Subject to sub-paragraphs (3) and (4), the undertaker may use any watercourse, public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs, whose consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but approval must not be unreasonably withheld or delayed; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b)(b) of the Environmental Permitting (England and Wales) Regulations 2016.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) 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(d) have the same meaning as in that Act.

(8) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.

## Authority to survey and investigate the land

**21.**—(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 (including any watercourses, groundwater, static water bodies or vegetation on the land);
- (b) without limitation to the scope of sub-paragraph (a), make any excavations, trial holes, boreholes and other investigations in such positions on the land as the undertaker thinks fit to investigate the extent or the nature of the surface layer, subsoil, ground water, underground structures, foundations, and plant or apparatus and remove soil and water samples and discharge water from sampling operations on to 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) and section 32, Schedule 3, paragraph 16(1) of the Flood and Water Management Act 2010 (c. 29).

(b) S.I. 2016/1154.

(c) 1964 c. 40.

(d) 1991 c. 57.

- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; 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 and boreholes.

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

(4) No trial holes are to be made under this article—

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

but such consent must not be unreasonably withheld or delayed.

(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(a) (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

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

### **Protective work to buildings**

**22.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building or structure 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 construction of any part of the authorised development in the vicinity of the building or structure; or
- (b) after the completion of that part of the authorised 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 date of final commissioning.

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

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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).

land within its curtilage and place on, leave on and remove from the land and building any apparatus and equipment for use in connection with the survey.

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

- (a) enter the building or structure 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 or structure but outside its curtilage, enter the adjacent land (but not any building erected on it) within the Order limits,

and if it is reasonably required, the undertaker may take possession, or exclusive possession, of the building and any land or part thereof for the purpose of carrying out the protective works.

(5) Before exercising—

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

the undertaker 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 power and, in a case falling within sub-paragraph (a), (c) or (d) specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), 5(b) (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 10 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 50 (arbitration).

(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, on 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.

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

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

(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 or structure by the construction, operation or maintenance of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, operation or maintenance of the authorised development; and

- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk of such operation being disrupted.

(12) 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.

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

**23.**—(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; or
- (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) 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 (determination of questions of disputed compensation) of the 1961 Act.

### **Removal of human remains**

**24.**—(1) In this article “the specified land” means the land within the Order limits.

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

(3) Subject to paragraph (14), before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the relevant area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the local authority.

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

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

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

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

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

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

(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 (8) 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 (8) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be reinterred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

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

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation is to be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to be sent by the undertaker to the local authority mentioned in paragraph (4).

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

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

(14) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(15) In the case of remains in relation to which paragraph (14) applies, the undertaker—

- (a) may remove the remains; and
- (b) must apply for direction from the Secretary of State under paragraph (12) as to their subsequent treatment.

(16) In this article—

- (a) references to a relative of the deceased are to a person who is a—

- (i) husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased;  
or
- (ii) child of a brother, sister, uncle or aunt of the deceased;
- (b) references to a personal representative of the deceased are to a person or persons who is the lawful executor of the estate of the deceased or is the lawful administrator of the estate of the deceased.

## PART 5

### POWERS OF ACQUISITION AND POSSESSION OF LAND

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

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

(2) This article is subject to article 27 (time limit for exercise of authority to acquire land compulsorily) and paragraph (9) of article 34 (temporary use of land for carrying out the authorised development).

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

**26.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981<sup>(a)</sup> is incorporated in this order subject to the modification that for “the acquiring authority” substitute “the undertaker”.

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

**27.**—(1) After the end of the period of five years beginning on the day on which this Order comes into force—

- (a) no notice to treat may be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act; and
- (b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the 1981 Act).

(2) The authority conferred by article 34 (temporary use of land for carrying out the authorised development) must cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

#### **Private rights**

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

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

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(a) 1981 c. 67.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right or apparatus to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 36 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition or creation of rights over land or the imposition of restrictive covenants over or affecting 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 do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction 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 is vested or belongs; and

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

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

(8) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the use of land arising by virtue of a contract, agreement or undertaking having that effect.

### **Power to override easements and other rights**

**29.**—(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 within the Order limits (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) Subject to article 52 (no double recovery), where an interest, right or restriction is overridden by paragraph (1), unless otherwise agreed, 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 1981 Act**

- 30.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act) for subsection (2) substitute—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.
- (4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(a) (time limit for general vesting declaration).
- (6) In section 5B(b) (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 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 27 (time limit for exercise of authority to acquire land compulsorily) of the Boston Alternative Energy Facility Order 202[ ]”.
- (7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1(c)(counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 32 (acquisition of subsoil or air-space only) of the Boston Alternative Energy Facility Order 202[ ], which excludes the acquisition of subsoil only from this Schedule.”.
- (10) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 31 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

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(a) Inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).  
 (b) Inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).  
 (c) Inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).



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

**31.**—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) 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)(a) (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 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 27 (time limit for exercise of authority to acquire land compulsorily) of the Boston Alternative Energy Facility Order 202[ ]”.

(3) In section 11A(b) (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) (interests omitted from purchase), for “section 4 of this Act” substitute “article 27 (time limit for exercise of authority to acquire land compulsorily) of the Boston Alternative Energy Facility Order 202[ ]”.

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

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

“(2) But see article 32(3) (acquisition of subsoil or air-space only) of the Boston Alternative Energy Facility Order 202[ ], which excludes the acquisition of subsoil only from this Schedule.”; and

(b) after paragraph 29 insert—

## **“PART 4**

### **INTERPRETATION**

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 22 (protective work to buildings) or article 34 (temporary use of land for carrying out the authorised development) or article 35 (temporary use of land for maintaining the authorised development) of the Boston Alternative Energy Facility Order 202[ ].”.

## **Acquisition of subsoil or air-space only**

**32.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or air-space over the land referred to in paragraph (1) of article 25 (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 or air-space over land under paragraph (1), the undertaker is not 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;

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(a) Inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(b) Inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(c) Inserted by Schedule 17(1) paragraph 3 to the Housing and Planning Act 2016 (c. 22).

- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory.

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

**33.**—(1) The undertaker may enter upon, appropriate and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or for any other purpose ancillary to the authorised development.

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

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

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

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

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

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

**34.**—(1) The undertaker may, in connection with the construction of the authorised development—

- (a) enter on and take temporary possession of—
  - (i) the land specified in column (1) of the table in Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of the table in that Schedule;
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act (other than a notice of entry or a declaration in connection with the acquisition of rights and/or the imposition of restrictive covenants only);
- (b) remove any buildings, apparatus, fences, landscaping, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works on that land as are mentioned in Schedule 1 (authorised development).

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

(3) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;

- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

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

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

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land unless otherwise agreed but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

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

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

(8) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (5) does not prevent the undertaker giving up possession of the land.

(9) Subject to article 52 (no double recovery) nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

- (a) any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) under article 32 (acquisition of subsoil or air-space only); or
- (b) article 33 (rights under or over streets).

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

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

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land under paragraph (1).

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

**35.**—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (11)) relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if possession is reasonably required for the purpose of maintaining the authorised development;
- (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
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

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

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

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

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

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

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

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

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

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

(12) In this article “the maintenance period” means the period of 5 years beginning with the date of final commissioning.

## **Statutory undertakers**

**36.**—(1) Subject to the provisions of Schedule 8 (protective provisions), the undertaker may—

- (a) exercise the powers conferred by article 25 (compulsory acquisition of land) in relation to so much of the Order land belonging to statutory undertakers;
- (b) extinguish or suspend the rights of or restrictive covenants for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which article 37 (apparatus and rights of statutory undertakers in stopped up streets) of this Order applies.

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

**37.**—(1) Where a street is stopped up under article 14 (permanent stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street has 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 13 (temporary closure, alteration, diversion and restriction of use of streets) any statutory utility whose apparatus is under, in, on over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

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

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

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

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

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

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility 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) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

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

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

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

**38.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 36 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 36 (statutory undertakers) any person who is—

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

is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 37 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) 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(b); and

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

### **Disregard of certain improvements, etc.**

**39.**—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised

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(a) 2003 c. 21.

(b) 2003 c. 21.

development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

#### **Set-off for enhancement in value of retained land**

**40.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) The 1961 Act has effect, subject to paragraph (1) as if this Order were a local enactment for the purposes of that Act.

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

#### **Disapplication of legislative provisions, etc.**

**41.**—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction or maintenance of the authorised development—

- (a) sections 23 (prohibition of obstructions, etc. in watercourses), 30 (authorisation of drainage works in connection with a ditch) and 32 (variation of awards) of the Land Drainage Act 1991<sup>(a)</sup>;
- (b) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991;
- (c) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the appropriate agency) to the Water Resources Act 1991<sup>(b)</sup>; and
- (d) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016<sup>(c)</sup> in respect of a flood risk activity only.

(2) The provisions of the Neighbourhood Planning Act 2017<sup>(d)</sup>, insofar as they relate to temporary possession of land under this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 35(12) (temporary use of land for maintaining the authorised development) of this Order, any maintenance of any part of the authorised development.

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<sup>(a)</sup> 1991 c. 59.

<sup>(b)</sup> 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the 2009 Act (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

<sup>(c)</sup> S.I. 2016/1154.

<sup>(d)</sup> 2017 c. 20.

(3) Section 25 of the Burial Act 1857<sup>(a)</sup> (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with article 24 (removal of human remains) of this Order.

(4) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010<sup>(b)</sup> any building comprised in the authorised development is deemed to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

### **Amendment of local legislation**

**42.**—(1) The following local enactments and local byelaws, and any byelaws or other provisions made under any of those enactments or byelaws, are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order—

- (a) Boston Port and Harbour Act 1812<sup>(c)</sup>;
- (b) Witham Navigation and Drainage Act 1812<sup>(d)</sup>;
- (c) River Witham Outfall Improvement Act 1880<sup>(e)</sup>;
- (d) Boston Dock Act 1881<sup>(f)</sup>;
- (e) Land Drainage (Black Sluice) Provisional Order Confirmation Act 1925<sup>(g)</sup>;
- (f) The Boston Barrier Order 2017<sup>(h)</sup>;
- (g) Boston Dock Byelaws 1947; and
- (h) Black Sluice Internal Drainage Board Complete Land Drainage Byelaws 1988.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or
- (c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;
- (b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and
- (c) the extent of that exclusion.

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(a) 1857 c. 81.

(b) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant to this Order.

(c) 1812. c. 105.

(d) 1812 c. 108.

(e) 1880 c. cliii.

(f) 1881 c. cxii.

(g) 1925 c. lxxi.

(h) S.I. 2017/1329.



### **Planning permission, etc.**

**43.**—(1) If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the development authorised by this Order,

then the construction, maintenance, use or operation of that development under the terms of the planning permission does not constitute a breach of the terms of this Order.

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

(3) Development consent granted by this Order is to be treated as planning permission in accordance with Part 3 (control over development) of the 1990 Act for the purposes of Regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012<sup>(a)</sup> and the Forestry Act 1967<sup>(b)</sup>.

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

**44.**—(1) This article applies to—

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

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

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

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

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

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

**45.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990<sup>(c)</sup> in relation to a nuisance falling within paragraphs (c), (d), (e), (fb), (g) or (h) of section 79(1) (statutory nuisances

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(a) S.I. 2012/605.

(b) 1967 c. 10.

(c) 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.

and inspections therefor) of that Act 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 construction 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(a); 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) For the purposes of paragraph (1), compliance with the controls and measures described in the Code of Construction Practice approved under paragraph 10 of Schedule 2 to this Order will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) 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**

46. Schedule 8 (protective provisions) to the Order has effect.

### **Deemed marine licence**

47. The marine licence set out in Schedule 9 (deemed marine licence) is deemed to have been issued under Part 4 of the 2009 Act for the licensed activities set out in Part 1, and subject to the licence conditions set out in Part 4, of that licence.

### **Certification of documents, etc.**

48.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans referred to in Schedule 10 (documents and plans to be certified) to this Order for certification that they are true copies of those documents.

(2) Where any plan or document set out in Schedule 10 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

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

### **Service of notices**

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

- (a) by post;

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(a) 1974 c. 40.

- (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 (7) to (9), by electronic transmission.

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

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

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

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

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

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

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

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

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

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven 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.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

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(a) 1978 c. 30.

## **Arbitration**

**50.**—(1) Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must 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 President of the Institution of Civil Engineers.

(2) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order will not be subject to arbitration.

## **Procedures in relation to approvals, etc., under Schedule 2**

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

(2) Part 2 of Schedule 2 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements set out in Part 1 of Schedule 2, and any document referred to in any requirement in that Part 1.

(3) The procedure set out in Part 2 of Schedule 2 has effect in relation to any other consent, agreement or approval required under this Order where such consent, agreement or approval is granted subject to any condition to which the undertaker objects or is refused or is withheld.

## **No double recovery**

**52.** 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.

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

**53.**—(1) The undertaker must not begin to exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order 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
- (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 25 (compulsory acquisition of land);
- (b) article 28 (private rights);
- (c) article 33 (rights under or over streets);
- (d) article 34 (temporary use of land for carrying out the authorised development);
- (e) article 35 (temporary use of land for maintaining the authorised development); and
- (f) article 36 (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.

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

	<i>Name</i>
	Head of Energy Infrastructure Planning
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) (nationally significant infrastructure projects: general) and section 15 (generating stations) of the 2008 Act being a generating station with a capacity of over 50 megawatts but below 300 megawatts and associated development under sections 115(1) and (2) (development for which development consent may be granted) of the 2008 Act comprising all or part of—

#### **In the Borough of Boston, Lincolnshire**

**Work No 1** — Works to construct a power generation facility—

- (a) **Work No. 1A** — an energy recovery facility with a capacity to process up to 1,200,000 tonnes of waste refuse derived fuel per calendar year including—
  - (i) fuel reception and storage facilities consisting of a bale shredding facility, solid fuel storage bunker, cranes and handling equipment;
  - (ii) up to three 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 air pollution control residues and reagent storage silos and tanks;
  - (iii) associated induced fans and emissions control monitoring systems per line;
  - (iv) one emission stack per line;
  - (v) a dedicated steam turbine connected to each line;
  - (vi) an integrated protection system and uninterruptable power supplies;
  - (vii) an air cooled condenser array;
  - (viii) connection from exhaust stacks from lines one and three to Work No. 1C for capture of carbon dioxide and return connection for waste exhaust gases; and
  - (ix) conveyors to transfer bottom ash and boiler ash to ash processing facility (Work No. 1B).
- (b) **Work No. 1B** — an ash processing building with a capacity to process up to 200,000 tonnes of bottom ash and boiler ash per calendar year including—
  - (i) ash storage facilities to receive ash from Work No. 1A;
  - (ii) ash processing facilities to prepare ash for transfer to the lightweight aggregates facility (Work No. 2);
  - (iii) ferrous magnet system and storage for separated ferrous material;
  - (iv) solar photovoltaic panels on all or part of Work No.1B building roof including switchgear, inverters, transformers and permanent equipment for maintenance to deliver power to the authorised development; and
  - (v) conveyor system for transfer of processed ash and air pollution control residues to Work No. 2.
- (c) **Work No. 1C** — two carbon dioxide processing units, consisting of a carbon dioxide processing unit, storage tanks, vehicle connection points; return connection to stack for lines one and three.

**Work No. 2** — Works to construct a lightweight aggregate manufacturing facility with a capacity to process up to 300,000 tonnes of aggregate per calendar year including—

- (a) storage silo facilities for lightweight aggregate processing lines;
- (b) four processing lines; each line including a feed hopper, mixer units, trefoil kiln, and flue gas treatment facilities including air pollution control residues and reagent storage silos and tanks;
- (c) associated induced fans and emissions control monitoring systems per line;
- (d) two filter banks and two emission stacks;
- (e) storage silos for storing manufactured lightweight aggregate pellets; and
- (f) sealed storage pits, drainage and sump facilities for storing up to 190,000 tonnes of imported clay per calendar year, and up to 10,000 tonnes of sediment dredged from The Haven during maintenance dredging activities per calendar year for use in the lightweight aggregates manufacturing process.

**Work No. 3** — Works to construct an electrical substation including on-site below ground trenches, ducting and jointing pits; and above ground structures including switchgear, and transformer, busbar sections, integrated protection scheme and uninterruptable power supplies; connection from power generation turbine facility (Work No 1A); and connection to 132kV pylon for export of power from the facility; and incoming connection point from the grid.

**Work No. 4** — Works to construct a wharf facility with a capacity to receive up to 1,200,000 tonnes of waste refuse derived fuel and imported clay and sediment, and export up to 300,000 tonnes lightweight aggregates per calendar year including—

- (a) 400m long wharf structure forming 7.2m A.O.D. flood defence line containing up to three berthing points and scour protection;
- (b) cranes and refuse derived fuel bale handling equipment;
- (c) two conveyor lines (both partially open for loading, then covered sections) to transfer waste refuse derived fuel bales to Works No. 1A, including thermal cameras;
- (d) wharf ramp structure;
- (e) bale contingency storage area;
- (f) re-baling facility;
- (g) bale quarantine area;
- (h) conveyor and handling equipment for loading ships with manufactured aggregate;
- (i) shore to ship power facility; and
- (j) storage areas for mobile plant Equipment, including mobile cranes and forklift trucks.

**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(s), pump room(s) and fire protection facilities;
- (e) control rooms;
- (f) administration block(s) including welfare facilities;
- (g) distributed control system;
- (h) workshop(s) and associated stores;
- (i) machinery storage facilities;
- (j) security gatehouses and barriers;
- (k) weighbridges;
- (l) a heavy goods vehicle holding area;
- (m) storage for on-site mobile equipment
- (n) an external fuel container storage area;

- (o) visitor centre;
- (p) 11kv transformers to distribute power from Work No. 3; and
- (q) emergency stand-by generator(s).

**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 site pedestrian access routes;
- (d) a footbridge spanning footpaths BOST/14/11 and BOST/14/9 to allow safe pedestrian passage over certain site roads; and
- (e) operational vehicle parking.

**Work No. 7** — Works to construct temporary construction compounds including—

- (a) hard standing;
- (b) vehicle parking;
- (c) office accommodation block(s) and welfare facilities;
- (d) new or alteration to accesses;
- (e) concrete batching plant, generators, aggregates storage area and temporary aggregates conveyor from the wharf to the concrete batching plant; and
- (f) construction areas.

In connection with and in addition to Work Nos. 1, 2, 3, 4, 5, 6 and 7 to the extent that it does not otherwise form part of those Work Nos., further associated development within the Order limits including—

- (a) lighting infrastructure, including perimeter lighting columns;
- (b) fencing, boundary treatment and other means of enclosure;
- (c) signage;
- (d) CCTV and other security apparatus;
- (e) surface and foul water drainage facilities;
- (f) potable water supply;
- (g) new telecommunications and utilities apparatus and connections;
- (h) hard and soft landscaping;
- (i) biodiversity enhancement measures and environmental mitigation measures;
- (j) works permanently to alter the position of existing telecommunications and utilities apparatus and connections;
- (k) works for the protection of buildings and land; and
- (l) 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.



## SCHEDULE 2 REQUIREMENTS

Article 3

### PART 1 REQUIREMENTS

#### **Interpretation**

**1.—(1)** In this Schedule—

“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;

“Defra biodiversity off-setting metric” means the mechanism published by the Department for Environment, Food and Rural Affairs to quantify impacts on biodiversity, which allows biodiversity losses and gains affecting different habitats to be compared and ensures offsets are sufficient to compensate for residual losses of biodiversity;

“habitat mitigation area” means the area shown on Figure 17.9 of the environmental statement;

“heavy commercial vehicle” has the meaning given by section 138 (meaning of “heavy commercial vehicle”) of the Road Traffic Regulation Act 1984<sup>(a)</sup>;

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

“wharf outage” means circumstances caused by factors beyond the undertaker’s control in which waste, clay or sediment has not or could not be received at Work No. 4 for a period in excess of four consecutive days.

(2) References in this Schedule to part of the authorised development are to be construed as references to stages, phases or elements of the authorised development in respect of which an application is made by the undertaker under this Schedule, and references to commencement of part of the authorised development in this Schedule are to be construed accordingly.

(3) References to details or schemes approved under this Schedule are to be construed as references to details or schemes approved in relation to a specified part of the authorised development, as the case may be.

#### **Time limits**

**2.—(1)** The authorised development must not commence after the expiry of five years from the date on which this Order comes into force.

(2) The authorised development must not commence unless the undertaker has given the relevant planning authority one month’s notice of its intention to commence the authorised development.

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(a) 1984 c. 27.

### Detailed design approval

3.—(1) The authorised development must be designed in detail and carried out in accordance with the design principles contained in the design and access statement and the preliminary scheme design shown on the indicative generating station plans and indicative wharf plans, unless otherwise agreed in writing by the relevant planning authority, following consultation with the Environment Agency to the extent that it relates to matters relevant to its function, provided that the relevant planning authority is satisfied that any amendments to those documents showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the relevant planning authority under sub-paragraph (1), those details are deemed to be substituted for the corresponding indicative generating station plans and indicative wharf plans the undertaker must make those amended details available in electronic form for inspection by members of the public.

### Parameters of authorised development

4. 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 (6) of that table.

(1) <i>Element of authorised development</i>	(2) <i>Work No.</i>	(3) <i>Maximum length (metres)</i>	(4) <i>Maximum width (metres)</i>	(5) <i>Maximum height (metres) from ground level unless stated</i>	(6) <i>Minimum height (metres) from ground level unless stated</i>
Main energy recovery facility buildings (3 No. units, dimensions per unit)	1A	105	35	44	–
Energy recovery stacks (3 No.)	1A(iv)	–	–	80	–
Turbine building	1A(v)	55	40	20	–
Air cooled condenser array	1A(vii)	65	45	30	–
Ash processing building	1B	70	30	32	–
Carbon dioxide recovery building	1C	30	20	12	–
Lightweight aggregates main building	2	75	40	44	–
Lightweight aggregates storage silos	2(a), 2(e)	6	6	25	–
Lightweight aggregates stacks (2 No.)	2(d)	–	–	80	–
Electrical substation	3	95	35	–	–
Wharf	4(a)	400	–	–	7.2 (AOD)
Supporting buildings and facilities (control room, visitor centre, workshops)	5	40	20	15	–

## **Landscape and ecological mitigation strategy**

**5.**—(1) No part of the authorised development may commence until a landscape and ecological mitigation strategy for that part has been submitted to and approved by the relevant planning authority, following consultation by the undertaker with the Environment Agency, the relevant statutory nature conservation body, Lincolnshire Wildlife Trust and the Royal Society for the Protection of Birds.

(2) The landscape and ecological mitigation strategy approved under sub-paragraph(1) must be substantially in accordance with the outline landscape and ecological landscape mitigation strategy.

(3) The landscape and ecological mitigation strategy approved under sub-paragraph (1) must include details of—

- (a) mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the construction of the authorised development;
- (b) mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the operation of the authorised development;
- (c) the results of the Defra biodiversity off-setting metric together with the off-setting value required, the nature of such off-setting and evidence that the off-setting value provides for the required biodiversity compensation, risk factors (including temporal lag) and long term management and monitoring;
- (d) the site or sites on which the compensation off-setting required pursuant to (c) will be provided together with evidence demonstrating that the site or sites has/have been chosen in accordance with the prioritisation set out in the outline landscape and ecological mitigation strategy;
- (e) certified copies of the completed legal agreements with the Environment Bank securing the site or sites identified in (d) and which demonstrate that the off-setting value will be paid to the Environment Bank within 10 days of approval of the landscape and ecological mitigation strategy to enable enactment of the biodiversity off-setting scheme and the biodiversity off-setting management and monitoring plan as approved in the landscape and ecological mitigation strategy; and
- (f) 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.

(4) The landscape and ecological mitigation strategy must be implemented as approved under sub-paragraph (1).

## **Archaeology**

**6.**—(1) No part of Work Nos. 1, 2, 3, 4, 5 and 6 may commence until for that part a written scheme of investigation, reflecting the relevant mitigation measures set out in the outline written scheme of investigation has been submitted to and approved by the relevant planning authority, following consultation by the undertaker with Historic England.

(2) Works Nos. 1, 2, 3, 4, 5 and 6 must be carried out in accordance with the scheme referred to in sub-paragraph (1), unless otherwise agreed by the relevant planning authority.

## **Highway access**

**7.**—(1) No part of Work No. 7 may commence until written details of the siting, design and layout of any new 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, following consultation by the undertaker with the relevant highway authority.

(2) The highway accesses must be constructed or altered as approved under sub-paragraph (1).

(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.

### **Surface water drainage**

**8.**—(1) No part of the authorised development may commence until for that part a surface water drainage strategy has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency, lead local flood authority and relevant internal drainage board on matters related to their function.

(2) The strategy submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline surface water drainage strategy.

(3) The surface water drainage strategy must be implemented as approved under sub-paragraph (1) and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

### **Contamination**

**9.**—(1) No part of the authorised development may commence until—

- (a) intrusive ground investigations have been carried out for the purpose of assessing ground conditions; and
- (b) a scheme to deal with the contamination of land, including groundwater, and ground gases which are likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and approved by the relevant planning authority.

(2) The scheme must include a risk assessment, supported by site investigation data, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose.

(3) With respect to ground gases, the risk assessment required under sub-paragraph (2) must adopt the source-pathway-receptor principle to identify plausible contaminant linkages and take into account potential migration of off-site ground gases.

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

(5) Should any remediation be required a verification report demonstrating the completion of works set out in the approved scheme and the effectiveness of the remediation must be submitted to, and approved, by the relevant planning authority prior to the date of final commissioning.

(6) The verification report submitted for approval under sub-paragraph (5) must include results of sampling and monitoring carried out in accordance with the remediation strategy to demonstrate that the site remediation criteria have been met along with any long-term post-remediation monitoring requirements.

### **Code of construction practice**

**10.**—(1) 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, following consultation with the Environment Agency and the relevant statutory nature conservation body to the extent that it relates to matters relevant to their function.

(2) 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 reflect the mitigation measures set out in the register of environmental actions and commitments (Application Document 7.6).

(3) The code of construction practice submitted under sub-paragraph (1) must include the following—

- (a) the construction and phasing programme;
- (b) liaison procedures;
- (c) complaints procedures;
- (d) an air quality and dust management plan detailing air quality and dust monitoring and management measures during construction;
- (e) construction noise and vibration monitoring and management plan;
- (f) a site waste management plan detailing sustainable site waste management measures;
- (g) a soil management plan detailing measures to ensure the temporary storage of soils and other material of value will be in accordance with best practice;
- (h) details of screening and fencing to be installed during construction;
- (i) a materials management plan detailing measures to ensure the safe storage of excavated materials during construction;
- (j) a pollution prevention and incident response plan detailing measures to prevent and control the spillage of oil, chemicals and other potentially harmful liquids;
- (k) a health and safety plan, including details of how health and safety risks are to be identified and managed during construction;
- (l) a surface and foul water drainage plan including measures for the protection of surface and groundwater during construction;
- (m) an artificial light emissions management plan;
- (n) measures to ensure the restoration of site following completion of construction; and
- (o) appropriate procedures to address any unexploded ordnance that may be encountered.

(4) All construction works must be undertaken in accordance with the approved code of construction practice.

### **Construction hours**

**11.**—(1) Construction works relating to the authorised development must not take place on Sundays, bank holidays nor otherwise outside the hours of 0800 to 2000 hours on Monday to Saturday (with the option of 0700 to 1900).—

(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**

**12.**—(1) 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, following consultation by the undertaker with the relevant highway authority.

(2) A construction traffic management plan 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, proposals for 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;
- (h) a procedure for reviewing and updating the construction traffic management plan;
- (i) a construction worker travel plan, including details of the likely number of worker vehicle movements and the management of workforce parking; and
- (j) appropriate procedures to provide for a vehicle booking management system.

(3) The construction traffic management plan submitted pursuant to sub-paragraphs (1) and (2) must be accompanied by a statement and associated junction appraisals (as defined in the outline construction traffic management plan) demonstrating how the likely construction traffic impacts identified in the environmental statement are addressed through the measures contained in the construction traffic management plan.

(4) The construction traffic management plan submitted pursuant to sub-paragraphs (1) and (2) that relates to Work Nos. 1, 2, 3, 4, 5, 6 and 7 must be accompanied by a pre-condition highway survey (as defined in the outline construction traffic management plan).

(5) The construction traffic management plan and any updated construction traffic management plan submitted following any review must be implemented as approved by the relevant planning authority.

### **Flood risk emergency plan**

**13.—**(1) No part of the authorised development may commence until a flood risk emergency plan has been submitted to and approved by the relevant planning authority, following consultation by the undertaker with the Environment Agency, Black Sluice Internal Drainage Board and the Lead Local Flood Authority.

(2) The flood risk emergency plan must include—

- (a) procedures to receive flood warnings (including communication lines to cover shift patterns and / or staff leave), and closure of or evacuation of the authorised development with sufficient lead time to ensure no personnel or vehicles are left within the Order limits during times of a flood warning; and
- (b) identification of areas of emergency refuge to be located above the modelled breach flood depths.

(3) The flood risk emergency plan must be implemented as approved by the relevant planning authority.

### **Community benefits**

**14.—**(1) No part of the authorised development may commence until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents during construction and employment opportunities during operation of the authorised development has been submitted to and approved by the relevant planning authority, following consultation by the undertaker with the Assistant Director Growth at Lincolnshire County Council.

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

### **Phasing of construction and commissioning of Work Nos. 1 and 2**

**15.**—(1) Subject to sub-paragraph (2), no part of the authorised development may commence until a phasing programme setting out the commencement of construction and the anticipated start of commissioning and the anticipated date of final commissioning for each of Work Nos. 1 and 2 has been submitted to and approved by the relevant planning authority.

(2) The phasing programme must provide for the anticipated date of final commissioning of Work Nos. 1 and 2 as soon as reasonably practicable. The phasing programme must be implemented as approved by the relevant planning authority.

### **Operational lighting scheme**

**16.**—(1) Prior to the commissioning of any part of Work Nos. 1, 2, 3, 4 and 5 a written scheme for the management and mitigation of operational external artificial light emissions for that part must be submitted to and approved by the relevant planning authority.

(2) The written scheme must be substantially in accordance with the outline lighting strategy.

(3) The scheme for the management and mitigation of operational external artificial light emissions must be implemented as approved under sub-paragraph (1).

### **Operational vehicle movements**

**17.**—(1) Waste must not be delivered by road to Work No. 1A save in the event of a wharf outage or in circumstances where, following consultation by the undertaker with the relevant highway authority, the relevant planning authority is satisfied that such delivery of waste by road would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Clay and sediment must not be delivered by road to Work No. 2 or lightweight aggregates exported by road from Work No. 2 save in the event of a wharf outage or in circumstances where, following consultation by the undertaker with the relevant highway authority, the relevant planning authority is satisfied that such delivery or export by road would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(3) Prior to the date of final commissioning, the undertaker must submit to the relevant planning authority for approval an operational traffic management plan for that part, following consultation by the undertaker with the relevant highway authority.

(4) The operational traffic management plan must include—

- (a) an operational worker travel plan that includes measures to encourage the use of sustainable modes of transport by employees;
- (b) measures to manage the routing and number of heavy commercial vehicles during operation;
- (c) measures to manage the routing and number of heavy commercial vehicles in the event of a wharf outage;
- (d) provision as to the responsibility for, and timescales of, the implementation of those measures; and
- (e) a monitoring and review regime.

(5) The operational traffic plan must be implemented as approved under sub-paragraph (1).

### **Waste hierarchy scheme**

**18.**—(1) Prior to the commissioning of any part of Work No. 1A, the undertaker must submit to the relevant planning authority for approval a scheme, which sets out arrangements for maintenance of the waste hierarchy in priority order and which aims to minimise recyclable and reusable waste received at the authorised development during the commissioning and operational period of the authorised development (the “waste hierarchy scheme”).

- (2) The waste hierarchy scheme must include details of—
- (a) the type of information that must be collected and retained on the sources of the residual waste after recyclable and reusable waste has been removed;
  - (b) the arrangements that must be put in place for ensuring that as much reusable and recyclable waste as is reasonably possible is removed from waste to be received at the authorised development, including contractual measures to encourage as much reusable and recyclable waste being removed as far as possible;
  - (c) the arrangements that must be put in place for ensuring that commercial suppliers of residual waste operate a written environmental management system which includes establishing a baseline for recyclable and reusable waste removed from residual waste and specific targets for improving the percentage of such removed reusable and recyclable waste;
  - (d) the arrangements that must be put in place for suspending and/or discontinuing supply arrangements from commercial suppliers who fail to retain or comply with any environmental management systems;
  - (e) the arrangements that must be put in place for the provision of an annual waste composition analysis undertaken by the undertaker, with the findings submitted to the relevant planning authority within one month of the sampling being undertaken; and
  - (f) the form of records that must be kept for the purpose of demonstrating compliance with (a) to (e) and the arrangements in place for allowing inspection of such records by the relevant planning authority.
- (3) The waste hierarchy scheme must be implemented as approved under sub-paragraph (1).

### **Control of operational noise**

**19.**—(1) Prior to commissioning of any part of Works Nos. 1, 2, 3 and 4 a written noise monitoring scheme must be submitted to and approved by the relevant planning authority, such scheme must specify—

- (a) each location from which noise is to be measured;
- (b) the method of noise measurement, which must be in accordance with British Standard 4142:2014 +A1:2019;
- (c) the maximum permitted levels of noise at each agreed monitoring location must not exceed the defined limits to demonstrate compliance with government and local policy on noise;
- (d) provision requiring the undertaker to take noise measurements as soon as possible following a reasonable request by the relevant planning authority and to submit the measurements to the relevant planning authority as soon as they are available; and
- (e) a definition of the circumstances that constitute an emergency for the purposes of sub-paragraphs (2)(a), (3) and (5).

(2) The level of noise at each monitoring location must not exceed the maximum permitted level specified for that location in the scheme, except—

- (a) in the case of an emergency (as defined in the noise monitoring scheme);
- (b) with the prior approval of the relevant planning authority; or
- (c) as a result of steam purging or the operation of emergency pressure relief valves or similar equipment of which the undertaker has given notice in accordance with sub-paragraph (3).

(3) Except in the case of an emergency, the undertaker must give the relevant planning authority 48 hours' notice of any proposed steam purging or operation of emergency pressure relief valves or similar equipment.

(4) So far as reasonably practicable, steam purging and the operation of emergency pressure relief valves or similar equipment may only take place—



- (a) between 0900 and 1700 hours on weekdays (excluding bank holidays); and
- (b) between 0900 and 1300 hours on Saturdays (excluding bank holidays).

(5) Where the level of noise at a monitoring location exceeds the maximum permitted level specified for that location in the approved scheme because of an emergency—

- (a) the undertaker must, as soon as possible and in any event within two business days of the beginning of the emergency, submit to the relevant planning authority a statement detailing—
  - (i) the nature of the emergency;
  - (ii) why it is necessary for the level of noise to have exceeded the maximum permitted level;
- (b) if the undertaker expects the emergency to last for more than 24 hours, it must inform local residents and businesses affected by the level of noise at that location of—
  - (i) the reasons for the emergency; and
  - (ii) how long it expects the emergency to last.

### **Notice of start of commissioning and notice of date of final commissioning**

**20.**—(1) Where practicable, notice of the intended start of commissioning of Work No. 1A 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 of Work No. 1A, the undertaker must provide the relevant planning authority with notice of the date upon which such commissioning was duly completed.

### **Combined heat and power**

**21.**—(1) On the date that is 12 months after the date of final commissioning for Work No. 1A, the undertaker must submit to the relevant planning authority for its approval a report (“the CHP review”) updating the combined heat and power assessment.

(2) The CHP review submitted and approved must—

- (a) consider whether opportunities reasonably exist for the export of heat from numbered Work 1A; and
- (b) include a list of actions (if any) 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. 1A.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review.

(4) On each date during the operation of Work No. 1A that is five years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(5) Sub-paragraphs (2) and (3) apply in relation to a revised CHP review submitted under sub-paragraph (4) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (1).

### **Decommissioning**

**22.**—(1) Within 24 months of the permanent cessation of the operation of Work Nos. 1 and 2 details of a scheme for the restoration and aftercare of the land for Work Nos. 1, 2, 3, 5 and 6 must be submitted to and approved by the relevant planning authority and in consultation with the Environment Agency in relation to the matters in sub-paragraph (3).

(2) 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.

(3) The scheme must also identify provision for the ongoing maintenance and aftercare of—

- (a) Work No. 4, which will remain in situ to maintain the appropriate level of flood defence; and
- (b) the habitat mitigation works contained within the habitat mitigation area, which will remain in situ to provide habitat for redshank and other bird species.

(4) The scheme as approved under sub-paragraph (1) must be implemented in accordance with the phasing set out therein.

### **Amendments to approved details**

**23.**—(1) With respect to the documents certified under article 48 (certification of documents, etc.) the parameters specified in the table in paragraph 4 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.

### **Electricity generation cap**

**24.**—(1) The authorised development must not generate more than 300 megawatts unless otherwise agreed by the relevant planning authority provided that the relevant planning authority is satisfied that any increase would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) References in Schedule 1 (authorised development) to 300 megawatts are to be construed as references to any electricity cap approved under sub-paragraph (1).

### **Tonnage caps**

**25.**—(1) The total amount of—

- (a) waste to be received at Work No. 1A and Work No. 4 must not exceed 1,200,000 tonnes per calendar year;
- (b) bottom ash and boiler ash processed at Work No. 1B must not exceed 200,000 tonnes per calendar year; and
- (c) aggregate to be processed at Work No. 2 and received at Work No. 4 must not exceed 300,000 tonnes per calendar year,

unless otherwise agreed by the relevant planning authority provided that the relevant planning authority is satisfied that any increase would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) References in Schedule 1 (authorised development) to any tonnage amount are to be construed as references to any tonnage amount approved under sub-paragraph (1).

## PART 2

### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

#### **Applications made under Part 1**

**26.**—(1) Where an application has been made to a relevant planning authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order, the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with—

- (a) the day immediately following that on which the application is received by the relevant planning authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 27 (further information); or
- (c) such longer period as may be agreed between the parties.

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

(3) In determining any application made to the relevant planning authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the relevant planning authority may—

- (a) give or refuse its consent, agreement or approval; or
- (b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the relevant planning authority must provide its reasons for that decision with the notice of its decision.

#### **Further information**

**27.**—(1) In relation to any part of an application made under this Schedule, the relevant planning authority has the right to request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) If the relevant planning authority considers that further information is necessary and the requirement concerned contained in Part 2 of this Schedule does not specify that consultation with a consultee is required, the relevant planning authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement concerned contained in Part 1 of this Schedule specifies that consultation with a consultee is required, the relevant planning authority must issue the application to the consultee within five business days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the relevant planning authority does not give the notification within the period specified in sub-paragraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

#### **Fees**

**28.**—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of

the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012<sup>(a)</sup> (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

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

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within the decision period as determined under paragraph 27(1),

unless within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application.

### **Register of requirements**

**29.**—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the relevant planning authority.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the relevant planning authority has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

### **Appeals to the Secretary of State**

**30.**—(1) The undertaker may appeal to the Secretary of State if—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by—
  - (i) a requirement and any document referred to in any requirement in Part 1 of this Schedule; or
  - (ii) any other consent, agreement or approval required under this Order, or grants it subject to conditions to which the undertaker objects;
- (b) the relevant authority does not give notice of its decision to the undertaker within the period specified in paragraph 26(1) or grants it subject to conditions;
- (c) having received a request for further information under paragraph 27(1) the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application;
- (d) having received 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; or
- (e) the relevant planning authority issues a notice further to sections 60 or 61 of the Control of Pollution Act 1974<sup>(b)</sup>.

(2) The appeal process applicable under sub-paragraph (1) is 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 no determination has been made) the expiry of the decision period as determined under paragraph 26;

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(a) S.I. 2012/2920.

(b) 1974 c. 40.

- (b) the undertaker must submit to the Secretary of State a copy of the application submitted to the relevant planning authority and any supporting documents which the undertaker may wish to provide (“the appeal documents”);
- (c) the undertaker must on the same day provide copies of the appeal documents to the relevant planning authority and the requirement consultee (if applicable);
- (d) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider 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 their attention should be sent;
- (e) the relevant planning authority and the requirement consultee (if applicable) must submit any written representations in respect of the appeal to the appointed person within 10 business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person 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;
- (f) the appeal parties must make any counter-submissions to the appointed person within 10 business days beginning with the first day immediately following the date of receipt of written representations pursuant to sub-paragraph (d); and
- (g) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(4) Any further information required under sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.

(6) Any such representations must be submitted to the appointed person and made available to all appeal parties within 10 business days of the date mentioned in sub-paragraph (3).

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

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not) and may deal with the application as if it had been made to the appointed person in the first instance.

(8) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

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

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

(11) Any consent, agreement or approval given by the appointed person pursuant to this paragraph is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the relevant planning authority.

(12) The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(13) Except where a direction is given under sub-paragraph (14) requiring some or all of 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.

(14) On application by the relevant authority or undertaker, the appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(15) In considering whether to make any such direction as to the costs of the appeal parties and the terms on which it is to be made, the appointed person must have regard to the relevant Planning Practice Guidance published by the Ministry for Housing, Communities and Local Government or such guidance as may from time to time replace it.

### **Anticipatory steps towards compliance with any requirement**

**31.** If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

### **Interpretation of Part 2 of Schedule 2**

**32.** In Part 2 of Schedule 2—

“the appeal parties” means the relevant planning authority, the requirement consultee and the undertaker;

“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 (bank holidays) of the Banking and Financial Dealings Act 1971(a); and

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the relevant authority in discharging that requirement.

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(a) 1971 c.80.

### SCHEDULE 3

Article 10

### STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Authority</i>	<i>(2)</i> <i>Streets subject to street works</i>
Boston Borough Council	Nursery Road (private road)
	Callen Road (private road)
	Bittern Way (private road)

SCHEDULE 4

Article 12

STREETS SUBJECT TO ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

<i>(1)</i> <i>Street subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration</i>
Bittern Way (private road)	Secure site exit for HGV only – left turn only (works forming part of Work No. 5(j)) between points A and B on the access and rights of way plan.

PART 2

TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> <i>Street subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration</i>
Marsh Lane	Works for the provision of temporary accesses (works forming part of Work No. 7) at the point marked Construction Access Point 2 on the access and rights of way plan.



SCHEDULE 5

Article 13

TEMPORARY CLOSURE, ALTERATION, DIVERSION AND  
RESTRICTION OF THE USE OF STREETS

<i>(1)</i> <i>Street subject to temporary prohibition or restriction of use</i>	<i>(2)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
BOST/14/9	Length of footpath to be temporarily closed between the points marked TC2 to TC3 on the access and rights of way plan to install and facilitate the construction of Work No. 6(d).
BOST/14/11	Length of footpath to be temporarily closed between the points marked TC1 to TC2 on the access and rights of way plan to install and facilitate the construction of Work No. 6(d).

SCHEDULE 6

Article 14

PERMANENT STOPPING UP OF STREETS AND PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Highway to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
BOST/14/4	Footpath to be stopped up between the points marked ST1 to ST3 on the access and rights of way plan.
BOST/14/10	Footpath to be stopped up between the points marked ST3 to ST4 on the access and rights of way plan.
BOST/14/5	Footpath to be stopped up between the points marked ST3 to ST2 on the access and rights of way plan.

## SCHEDULE 7

Article 34

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Number of plot shown on land plan and Crown land plan</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
3	Temporary use to facilitate construction for Work No. 7 and other development necessary for the authorised development that takes place within the Order land.

## PROTECTIVE PROVISIONS

## PART 1

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

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(c); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(d) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at a future date) of that Act,

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

“functions” includes powers and duties;

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

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

“utility undertaker” means—

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- (a) 1989 c. 29.
  - (b) 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).
  - (c) 1991 c. 56.
  - (d) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37). Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to the Water Act 2014 (c. 21).

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
  - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

*On street apparatus*

**3.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

*Apparatus in stopped up streets*

**4.—(1)** Where any street is stopped up under article 14 (permanent stopping up of streets), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 13 (temporary closure, alteration, diversion and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway 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 highway.

*Protective works to buildings*

**5.** The undertaker, in the case of the powers conferred by article 22 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

*Acquisition of land*

**6.** Regardless of any provision in this Order or anything shown on the land plan and Crown land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

*Removal of apparatus*

**7.—(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 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 must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(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 28 days' 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 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 must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in 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 50 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 50 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (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 the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of 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) If the utility undertaker in question fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved.

(8) For the avoidance of doubt, any such “deemed consent” under sub-paragraph (7) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.

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

**8.**—(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 are to 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 50 (arbitration).

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

#### *Retained apparatus*

**9.**—(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 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan 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 under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

#### *Expenses and costs*

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably 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 7(2).

(2) There must 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 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 50 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must 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; and

- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**11.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of 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 undertaker,
- (c) by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the utility undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

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

(4) 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 who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### *Cooperation*

**12.** Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use 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 the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

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



## PART 2

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

**14.** For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

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

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

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

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

“electronic communications code network” means—

(a) so much of an electronic communications network or infrastructure 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 (application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the undertaker 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;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

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

**16.** The exercise of the powers conferred by article 36 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) to the electronic communications code.

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

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

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

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable 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 who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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(a) 2003 c. 21.

(b) See section 106. Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

(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 50 (arbitration).

(5) 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 damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

## PART 3

### FOR THE PROTECTION OF HIGHWAYS AND TRAFFIC UNDERTAKERS

**18.**—(1) The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the relevant highway authority.

(2) In this Part of this Schedule—

“highway” means any highway of which the relevant highway authority is the highway authority;

“plans” includes sections, designs, drawings, specifications, soil reports, staging proposals, programmes, calculations, methods of construction, risk assessments and details of the extent, timing and duration of any proposed occupation of any highway and “approved plans” means plans approved or deemed to be approved or settled by arbitration in accordance with the provisions of this Part of this Schedule;

“property of the relevant highway authority” means any apparatus or street furniture of the relevant highway authority affixed to or placed under any highway; and

“the relevant highway authority” means the highway authority for the area in which the highway to which the provisions of this Part of this Schedule is situated.

(3) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of the relevant highway authority, that approval or consent must be in writing and subject to such reasonable terms and conditions as the relevant highway authority may require.

(4) In exercising the powers conferred by this Order in relation to any highway the undertaker must have regard to the potential disruption of traffic which may be caused and must seek to minimise such disruption so far as is reasonably practicable.

(5) The undertaker must not, without the consent of the relevant highway authority, construct any part of the works authorised by this Order under and within 50 metres of the surface of any highway which comprises a carriageway except in accordance with plans submitted to, and approved by, the relevant highway authority; and if within 28 days after such plans have been submitted the relevant highway authority has not approved or disapproved them, it is deemed to have approved the plans as submitted.

(6) In the construction of any part of the said works under a highway no part of it shall, except with the consent of the relevant highway authority, be so constructed as to interfere with the provision of proper means of drainage of the surface of the highway or be nearer than two metres to the surface of the highway.

(7) The undertaker must not under the powers conferred by or under this Order without the consent of the relevant highway authority, acquire or enter upon, take or use whether temporarily or permanently or acquire any new rights over any part of any highway, including subsoil beneath the surface of any highway.

**19.**—(1) Before commencing the construction of, or the carrying out of any work which involves interference with a highway, the undertaker must submit to the relevant highway

authority for its approval plans, drawings and particulars (in this paragraph referred to as “plans”) relating thereto, and the works must not be carried out except in accordance with the plans submitted to, and approved by, the relevant highway authority.

(2) If within 28 days after the plans have been submitted the highway authority has not approved or disapproved them, it is deemed to have approved the plans as submitted.

(3) Any officer of the relevant highway authority duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the works authorised by this Order which—

(a) is in, over or under any highway, or

(b) which may affect any highway or any property of the relevant highway authority,

during the carrying out of the work, and the undertaker must give to such officer all reasonable facilities for such inspection and, if the officer is of the opinion that the construction of the work is attended with danger to any highway or to any property of the relevant highway authority on or under any highway, the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway.

**20.—**(1) The undertaker must not alter, disturb or in any way interfere with any property of the relevant highway authority on or under any highway, or the access thereto, without the consent of the relevant highway authority, and any alteration, diversion, replacement or reconstruction of any such property which may be necessary may be made by the relevant highway authority or the undertaker as the relevant highway authority thinks fit, and the expense reasonably incurred by the relevant highway authority in so doing must be repaid to the relevant highway authority by the undertaker.

(2) If within 28 days after a request for consent has been submitted the relevant highway authority has not given or refused such consent, it is deemed to have consented to the request as submitted.

**21.** The undertaker must not remove any soil or material from any highway except so much as must be excavated in the carrying out of the works authorised by this Order.

**22.—**(1) If the relevant highway authority, after giving to the undertaker not less than 28 days’ notice (or, in case of emergency, such notice as is reasonably practicable) of its intention to do so, incurs any additional expense in the signposting of traffic diversions, in the diversion of footpaths, in the taking of other measures in relation thereto, or in the repair of any highway by reason of the diversion thereto of traffic from a road of a higher standard, in consequence of the construction of the works authorised by this Order, the undertaker must repay to the relevant highway authority the amount of any such expense reasonably so incurred.

(2) An amount which apart from this sub-paragraph would be payable to the relevant highway authority by virtue of this paragraph in respect of the repair of any highway must, if the highway fell or would have fallen due for repair as part of the maintenance programme of the relevant highway authority at any time within ten years of the repair being carried out by the undertaker, so as to confer on the relevant highway authority financial benefit (whether by securing the completion of overdue maintenance work for which the relevant highway authority is liable or by deferment of the time for such work in the ordinary course), be reduced by the amount which represents that benefit.

**23.—**(1) The undertaker shall not, except with the consent of the relevant highway authority, deposit any soil or materials, or stand any plant, on or over any highway so as to obstruct or render less safe the use of the highway by any person, or, except with the like consent, deposit any soil or materials on any highway outside a hoarding, but if within 28 days after request for it any such consent is neither given nor refused it is deemed to have been given.

(2) The expense reasonably incurred by the relevant highway authority in removing any soil or materials deposited on any highway in contravention of this paragraph must be repaid to the relevant highway authority by the undertaker.

**24.** The undertaker must not, except with the consent of the relevant highway authority, erect or retain on or over a highway to which the public continues to have access any scaffolding or other structure which obstructs the highway.

**25.** The undertaker must, if reasonably so required by the relevant highway authority, provide and maintain to the reasonable satisfaction of the relevant highway authority, during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the works authorised by this Order, temporary bridges and temporary ramps for vehicular or pedestrian traffic over any part of the works or in such other position as may be necessary to prevent undue interference with the flow of traffic in the highway.

**26.—(1)** Where any part of any highway has been broken up or disturbed by the undertaker and not permanently stopped up or diverted, the undertaker must make good the subsoil, foundations and surface of that part of the highway to the reasonable satisfaction of the relevant highway authority, and must maintain the same to the reasonable satisfaction of the relevant highway authority for such time as may reasonably be required for the permanent reinstatement of the highway

(2) The reinstatement of that part of the highway must be carried out by the undertaker to the reasonable satisfaction of the relevant highway authority in accordance with such requirements as to specification of material and standards of workmanship as may be prescribed for equivalent reinstatement work by regulations made under section 71 of the New Roads and Street Works Act 1991(a).

**27.** If any damage to any highway or any property of the relevant highway authority on or under any highway is caused by, or results from, the construction of any work authorised by this Order or any order or omission of the undertaker, its contractors, agents or employees whilst engaged upon such work, the undertaker may, in the case of damage to a highway, make good such damage to the reasonable satisfaction of the relevant highway authority and, where the undertaker does not make good, or in the case of damage to property of the relevant highway authority, the undertaker must make compensation to the relevant highway authority.

**28.** The fact that any act or thing may have been done in accordance with plans approved by the relevant highway authority does not (if it was not attributable to the act, neglect or default of the relevant highway authority or of any person in its employ or its contractors or agents) exonerate the undertaker from any liability, or affect any claim for damages, under this Part or otherwise.

**29.** Any difference arising between the undertaker and the relevant highway authority under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) shall be resolved by arbitration under article 50 (arbitration).

## PART 4

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

**30.** The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the Applicant and the Agency.

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

“the Agency” means the Environment Agency;

“the Applicant” means the undertaker or any transferee under article 8 of this Order;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” shall 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

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(a) 1991 c. 22.

structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“existing permit” means any environmental permits, whether granted before or after the coming into force of this Order, or otherwise granted over the Order limits;

“the fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“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;

“permitted activity” means any work or operation which requires an environmental permit for waste operation in accordance with the Environmental Permitting (England and Wales) Regulations 2016(a);

“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) cause obstruction to the free passage of fish or damage to any fishery;
- (d) affect the conservation, distribution or use of water resources; or
- (e) affect the conservation value of the main river and habitats in its immediate vicinity;
- (f) “waste operation” means recovery or disposal of waste, which for the avoidance of doubt includes landfill; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

**32.—**(1) Before beginning to construct any specified work, the Applicant must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 42.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given 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;
- (c) in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (d) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) 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 (3)(b).

**33.—**(1) Before beginning to construct a permitted activity, the Applicant must submit the following details to the Agency for approval—

- (a) such details as the Agency reasonably requires to grant consent for the permitted activity; and

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(a) S.I. 2016/1154.

(b) such other reasonable requirements of the Agency as agreed between the parties.

(2) The permitted activity must be carried out in accordance with the approval of the Agency.

(3) As from the date on which the authorised development is commenced any conditions of an existing permit granted under the Environmental Permitting (England and Wales) Regulations 2016(a) (or any predecessor regulations or enactment) which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised development or, in respect of a permitted activity, an approval under sub-paragraph (1).

(4) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given 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) in the case of a refusal, must be accompanied by a statement of the grounds of refusal.

(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).

**34.** Without limiting paragraph 32, the requirements which the Agency may have under that paragraph include conditions requiring the Applicant, 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,

by reason of any specified work.

**35.—**(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 34, 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 Applicant 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 Applicant 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 Applicant at the Applicant's own expense to comply with the requirements of this part of this Schedule or (if the Applicant 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 40, if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the Applicant, the Applicant has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their

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(a) S.I. 2016/1154.

implementation, the Agency may execute the works specified in the notice and any expenditure incurred by the Agency in so doing shall be recoverable from the Applicant.

(6) In the event of any dispute as to whether sub-paragraph (4) 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 42.

**36.**—(1) Subject to sub-paragraph (5) the Applicant 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 Applicant 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 Applicant is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Applicant to repair the drainage work, or any part of such drainage work, or (if the Applicant so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified 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 (4) and paragraph 40, 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) on the Applicant, the Applicant 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 reasonably necessary for such compliance and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from the Applicant.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency shall 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 42.

(5) This paragraph does not apply to—

- (a) 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; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

**37.** Subject to paragraph 40, 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 Applicant to the reasonable satisfaction of the Agency and if the Applicant fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the Applicant.

**38.** 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 Applicant 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 as soon as reasonably practicable of the Applicant becoming aware of such obstruction.

**39.**—(1) The Applicant must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Applicant requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 40, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Applicant fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from the Applicant.

(4) Subject to paragraph 40, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Applicant any expenditure incurred in so doing provided that notice specifying those steps is served on the Applicant as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**40.** The Applicant must make reasonable compensation to the Agency in respect of all direct 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.

(2) Prior to granting approval under paragraphs 33 and 34, Agency shall inform the Applicant of the costs it expects to reasonably incur in granting approval.

**41.** The Applicant is responsible for and shall make reasonable compensation to the Agency for all costs and direct losses not otherwise provided for in this Part of this Schedule which may be reasonably incurred or suffered by the Agency by reason of—

- (a) the construction of any specified works comprised within the authorised works; or
- (b) any act or omission of the Applicant, its employees, contractors or agents or others whilst engaged upon the construction of the authorised works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes reasonably incurred—

- (a) expenses and charges;
- (b) staff costs and overheads;
- (c) legal costs; and

“losses” includes physical damage.

(3) The Agency must give to the Applicant reasonable notice of any such claim or demand and no settlement or compromise shall be made without the agreement of the Applicant which agreement shall not be unreasonably withheld or delayed.

(4) The fact that any work or thing has been executed or done by the Applicant 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 Applicant from any liability under the provisions of this Part of this Schedule.

**42.** Any dispute arising between the Applicant and the Agency under this part of this Schedule must, if the parties agree, be determined by arbitration under article 50 (arbitration), but must otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the Applicant or the Agency, after notice in writing by one to the other.



## PART 5

### FOR THE PROTECTION OF DRAINAGE AUTHORITIES

**43.** The provisions of this Part have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

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

“construction includes execution, placing, altering, replacing, relaying and removal; and “construct” and “constructed” must be construed accordingly;

“drainage authority” means in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(a);

“drainage work” means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse which is the responsibility of the drainage authority;

“ordinary watercourse” has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

“plans” includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements;

“specified work” means any of the following works carried out in relation to any ordinary watercourse—

- (a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;
- (b) the construction or alteration of a bridge or other structure;
- (c) erecting a culvert in the watercourse; or
- (d) altering a culvert in a manner that would be likely to affect the flow of the watercourse.

**45.—(1)** Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 14 days of the submission of the plans reasonably request.

(2) The undertaker must not commence construction of the specified work until approval, unconditionally or conditionally, has been given as provided in this paragraph.

(3) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 53.

(4) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, ordinary watercourse or for the prevention of flooding.

(5) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

**46.** Without limiting paragraph 45, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified

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(a) 1991 c. 59.

work (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 by reason of any specified work; or
- (b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased, by reason of any specified work.

**47.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 4, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the drainage authority, and an officer of the drainage authority is entitled to watch and inspect the construction of such works at all reasonable times and on reasonable notice.

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date of completion.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work to which the protective works relate.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any reasonable expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) 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 drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 53.

**48.**—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified work until the date falling 12 months from the date of completion of the specified work maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation on land held by the undertaker for the purpose of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of the work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to sub-paragraph (4) and paragraphs 50 and 51 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) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is reasonably necessary for such compliance and may recover any reasonable expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 53.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

**49.** Subject to paragraphs 50 and 51 and sub-paragraph 48(5)(b), if, by reason of the construction of a specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

**50.** The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur in—

- (a) the examination or approval of plans under this Part of this Schedule; and
- (b) inspecting the construction of the specified work or any protective works required by the drainage authority under this Part of this Schedule; and
- (c) subject at all times to receiving the prior written approval of the undertaker, in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work.

**51.—(1)** Without limiting the other provisions of this Part, the undertaker must make reasonable compensation to the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work;
- (b) any raising or lowering of the water table in land adjoining the authorised project or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such lands,

caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the specified work.

(2) The drainage authority 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 which agreement must not be unreasonably withheld or delayed.

(3) The fact that any act or thing may have been done by the drainage authority on behalf of the undertaker or in accordance with a plan approved or deemed to have been approved by the drainage authority or in accordance with any requirement of the drainage authority or under its supervision does not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the drainage authority fails to carry out and execute the

works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

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

**52.** The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority or to its satisfaction does not (in the absence of negligence on the part of the drainage authority, its officers, contractors or agents), relieve the undertaker from any liability under this Part.

**53.** Any dispute arising between the undertaker and the drainage authority under this Part is to be determined by arbitration under article 50 (arbitration).

## DEEMED MARINE LICENCE

## PART 1

## INTRODUCTION

*Interpretation*

## 1.—(1) In this licence—

“the 2009 Act” means the Marine and Coastal Access Act 2009(a);

“authorised development” has the meaning given in paragraph 5;

“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 (bank holidays) of the Banking and Financial Dealings Act 1971(b);

“commence” means beginning to carry out any part of a licensed activity and “commenced” and “commencement” are to be construed accordingly;

“harbour authority” means the Port of Boston Authority;

“licensed activity” means any activity described in Part 2 of this licence;

“maintain” in relation to the authorised development includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve to the extent that such works do not give rise to any materially new or materially different environmental effects than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“maintenance dredging” means any activity which comprises the removal of recently accumulated sediments such as mud, sand and gravel in order to keep channels, berths and other areas at their designed depths and which takes place in circumstances where—

- (a) the level of the seabed to be restored by the dredging is not lower than it has been at any time during the past 10 years; and
- (b) there is evidence that dredging has previously been undertaken to that level (or lower) during that period;

“the marine area” has the meaning given to ‘UK marine area’ in section 42 of the 2009 Act;

“Marine Case Management System” or “MCMS” means the Marine Management Organisation’s online case management system;

“Mean High Water Springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“MMO” means the Marine Management Organisation;

“the Order” means the Boston Alternative Energy Facility Development Consent Order 202[ ];

“The Haven” means so much of The Haven, as is within the UK marine area;

“undertaker” means Alternative Use Boston Projects Limited or any transferee under article 9 (consent to transfer of benefit of Order) of the Order.

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(a) 2009 c. 23.

(b) 1971 c. 80.

(2) Unless otherwise specified, all geographical co-ordinates given in this licence are in latitude and longitude degrees and minutes to two decimal places.

2.—(1) Except where otherwise indicated, the main point of contact with the MMO and the address for email and postal returns and correspondence are as follows—

- (a) Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH; Tel. – 0300 123 1032, Fax – 0191 376 2681, Email – marine.consents@marinemanagement.org.uk or such replacement contact details as are notified to the undertaker in writing by the MMO;
- (b) The MMO Local Office – Marine Management Organisation, MMO Beverley Office, Room 13, Ground Floor, Crosskill House, Mill Lane, Beverley, HU17 9JB; Tel. – 0208 026 0519, Email –beverley@marinemanagement.org.uk or such replacement contact details as are notified to the undertaker in writing by the MMO.

(2) The contact details for the MMO Marine Pollution Response Team are Tel. (during office hours) – 0300 200 2024, Tel. (outside office hours) – 07770 977 825 or 0845 051 8486 and Email – dispersants@marinemanagement.org.uk, or such replacement contact details notified to the undertaker in writing by the MMO.

(3) Unless otherwise stated in writing by the MMO, all notifications required by this licence must be sent by the undertaker to the MMO using the MCMS.

## PART 2

### LICENSED ACTIVITIES

3. Subject to the licence conditions in Part 4 of this licence, this licence authorises the undertaker (and any agent, contractor or subcontractor acting on its behalf) to carry out any licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 (exemption specified by order) of the 2009 Act.

4. The activities set out in this Part may be carried out by the undertaker as if licenced under the 2009 Act.

5.—(1) In this licence, “authorised development” means—

- (a) the construction of a suspended deck wharf structure, forming 7.2m A.O.D flood defence line wall, containing three berthing points and tie-in to the existing flood defence;
- (b) the creation by dredging, use and maintenance of a berthing pocket within the following parameters—

**Table 1**

<i>Dimension</i>	<i>Parameter</i>
Length	570m ±5%
Width	110m ±5%
Depth	-3.5m OD ±5%
Area to be dredged	62,700 m <sup>2</sup> ±10%
Volume of material to be removed	225,000m <sup>3</sup> ±10%

- (c) the construction and maintenance of scour protection;
- (d) the construction of piles and pile caps within The Haven supporting piers and fendering;
- (e) the construction of fendering within The Haven;
- (f) the construction of a mooring within The Haven;
- (g) the implementation of appropriate lighting to ensure safe operation of the wharf;

- (h) the construction of a drainage system for the wharf;
- (i) the implementation of shore to ship power;
- (j) activities within The Haven and within the Order limits to—
  - (i) carry out excavations and clearance, deepening, scouring, cleansing, dumping and pumping operations;
  - (ii) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(a)) obtained in carrying out any such operations;
  - (iii) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);
  - (iv) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of The Haven;
  - (v) construct, place and maintain works and structures; and
  - (vi) provide lighting, signage and aids to navigation,
- (k) other works and development—
  - (i) to provide or alter embankments, foundations, retaining walls, drainage works, outfalls, pollution control devices, pumping stations, culverts, wing walls, fire suppression system water tanks and associated plant and equipment, lighting and fencing;
  - (ii) to alter the course of, or otherwise interfere with, navigable or non-navigable watercourses; and
  - (iii) to provide works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, operation or maintenance of the authorised development;
- (l) such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance, operation or use of the authorised development, including—
  - (i) maintenance dredging; and
  - (ii) other works associated with the provision of ecological mitigation, or to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works;
- (m) activities to carry out works and development of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the operation and maintenance of the authorised development; and
- (n) any other development within the meaning of section 32 (meaning of “development”) of the 2008 Act that is authorised by the Order;

but does not include the removal, relocation or detonation of ordinance.

(2) The undertaker (and any agent, contractor or subcontractor acting on its behalf) may engage in the licensed activities in the area bounded by the coordinates set out in Table 2 in this paragraph and more particularly shown on the works plans, to the extent that they fall below MHWS at the time the licensed activities are carried out.

**Table 2**

<i>Point Reference</i>	<i>Easting</i>	<i>Northing</i>
P01	534289.711000	342260.128000
P02	534168.677241	342181.781948

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(a) 1995 c. 21.

<i>Point Reference</i>	<i>Easting</i>	<i>Northing</i>
P03	534186.659851	342242.491799
P04	533845.617735	342661.592680
P05	533947.150000	342716.200000

(3) The undertaker (and any agent, contractor or subcontractor acting on its behalf) may engage in works associated with the provision of ecological mitigation in the area bounded by the coordinates set out in Table 3 in this paragraph and more particularly shown on the works plans, to the extent that they fall below MHWS at the time the works are carried out.

**Table 3**

<i>Point Reference</i>	<i>Easting</i>	<i>Northing</i>
MP01	534347.890096	342095.811837
MP02	534341.169854	342093.522370
MP03	534338.522725	342044.386572
MP04	534531.722964	341792.122480
MP05	534565.378031	341825.936298

## PART 3

### ENFORCEMENT

6. Any breach of this licence does not constitute a breach of the Order but is subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act.

## PART 4

### CONDITIONS

#### *General conditions*

7. For such of the licensed marine activities that involve the construction, alteration or improvement of works in or over the sea or under the sea bed, the conditions below apply to any person who for the time being owns, occupies or enjoys any use of those works.

8. The undertaker must notify the MMO at the earliest opportunity of any change to the information upon which the granting of this licence was based.

9.—(1) The undertaker must notify the HM Coastguard (mail to: nmoccontroller@hmcg.gov.uk) prior to commencement of any licensed activities.

(2) A copy of the notification must be provided to the MMO via MCMS within 24 hours of issue of the notification in sub-paragraph (1).

10.—(1) The undertaker must ensure that local mariners and fishermen's organisations are made fully aware of all licensed activities through a local notice to mariners issued at least 5 days before the commencement of the works.

(2) The notice to mariners must be updated and re-issued at fortnightly intervals during construction activities and within 5 days of any planned operations.

(3) A copy of the notice must be provided to the MMO via MCMS within 24 hours of issue of a notice under paragraphs (1) or (2).



### *Distribution of copies*

**11.**—(1) The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments is given to all agents, contractors and sub-contractors, as well as to all Masters of all vessels and transport managers involved.

(2) The undertaker must keep a copy of this license available for inspection at its registered address and any site office location at or adjacent to a construction site.

### *Prior approval of Licenced Activities*

**12.**—(1) The undertaker must submit details of a licenced activity to the MMO for approval in accordance with the procedure in Part 5, following consultation with the harbour authority, at least 13 weeks prior to the commencement of the licenced activity and licensed activities must not commence until written approval is provided by the MMO.

(2) Unless otherwise agreed by the MMO in writing, the details in sub-paragraph (1) must include—

- (a) the details of the person responsible for the carrying on of the licensed activity;
- (b) a programme of works including the timings, duration and the location of the licensed activity;
- (c) the method statement to be employed by the licenced holder in carrying out the licenced activity including details of the detailed dredging methodology to be employed by the undertaker;
- (d) contractor and vessel details;
- (e) plans and sections;
- (f) details of where the licensed activity was assessed in the Environmental Statement;
- (g) details of materials to be placed in or removed from the marine area;
- (h) environmental mitigation measures, which must be substantially in accordance with the measures set out in chapter 17 (marine and coastal ecology) of the environmental statement;
- (i) monitoring measures.

(3) Unless otherwise agreed by the MMO, the licenced activity must be carried out in accordance with the approval of the MMO.

### *Piling*

**13.**—(1) The undertaker must submit a piling method statement to the MMO for approval in accordance with the procedure in Part 5, following consultation with the Environment Agency, the relevant statutory nature conservation body, Lincolnshire Wildlife Trust and the Royal Society for the Protection of Birds, at least 13 weeks prior to the commencement of any operations consisting of piling and piling operations must not commence until written approval is provided by the MMO.

(2) Unless otherwise agreed by the MMO, the method statement must include the following—

- (a) the use of pile pads and pile shrouds at all times;
- (b) measures for managing potential risks to marine mammals in accordance with the marine mammal mitigation protocol approved under paragraph 17;
- (c)
- (d) details on the timing of piling activities throughout the year to ensure they are undertaken during non-sensitive periods for overwintering birds (being May – September);
- (e) details of the anticipated spread of piling activity throughout a working day; and
- (f) monitoring measures.

(3) Unless otherwise agreed by the MMO, percussive piling must only be carried out in accordance with the relevant piling method statement.

#### *Navigation management plan*

**14.**—(1) The undertaker must submit a navigation management plan to the MMO for approval in accordance with the procedure in Part 5, following consultation with the harbour authority and the Environment Agency to the extent that it relates to matters relevant to its functions, at least 13 weeks prior to the commencement of any licenced activity.

(2) The navigation management plan must include details of—

- (a) the construction timelines;
- (b) the potential risks to navigation;
- (c) communication measures;
- (d) measures for managing potential risks to marine mammals in accordance with the marine mammal mitigation protocol approved under paragraph 17;
- (e) measures for managing potential biosecurity risks; and
- (f) how each stage of the construction process and the operation of the authorised development will be managed to ensure a minimal impact on the safety of navigation in The Haven.

(3) The undertaker must not commence the licenced activities until the MMO has approved in writing the submitted navigation management plan.

(4) Unless otherwise agreed by the MMO, the navigation management plan must be implemented as approved by the MMO.

#### *Marine archaeology*

**15.**—(1) The undertaker must submit an archaeological written scheme of investigation (WSI) and protocol for archaeological discoveries (PAD) to the MMO for approval in accordance with the procedure in Part 5, following consultation with Historic England and the relevant planning authority, at least 6 weeks prior to the commencement of any licenced activity with the potential to affect buried archaeological assets.

(2) The undertaker must not commence the licensed activities until the MMO has approved in writing the submitted WSI and PAD.

(3) Unless otherwise agreed by the MMO, all activities must adhere to the terms of the WSI and PAD.

#### *Marine pollution contingency plan*

**16.**—(1) The undertaker must submit a marine pollution contingency plan to the MMO for approval in accordance with the procedure in Part 5, following consultation with the Environment Agency and the harbour authority, at least 13 weeks prior to the commencement of any construction activity.

(2) The marine pollution contingency plan must set out the undertaker's assessment of the likely risks which could arise as a result of a spill or collision during construction and maintenance of the authorised development and the methods and procedures the undertaker intends to put in place to address those risks.

(3) The undertaker must not commence the construction activities until the MMO has approved in writing the submitted marine pollution contingency plan.

#### *Marine mammal mitigation protocol*

**17.**—(1) The undertaker must submit a marine mammal mitigation protocol to the MMO for approval in accordance with the procedure in Part 5, following consultation with the relevant

statutory nature conservation body and Lincolnshire Wildlife Trust, at least 13 weeks prior to the commencement of any of licenced activity.

(2) The marine mammal mitigation protocol submitted for approval under sub-paragraph (1) must be in accordance with the outline marine mammal mitigation protocol.

(3) The undertaker must not commence the licenced activities until written approval is provided by the MMO under sub-paragraph (1).

(4) Unless otherwise agreed by the MMO, the marine mammal mitigation protocol must be implemented as approved by the MMO.

#### *Concrete and cement*

**18.**—(1) Waste concrete, slurry or wash water from concrete or cement activities must not be discharged, intentionally or unintentionally, into the marine environment.

(2) Concrete and cement mixing and washing areas must be contained and sited at least 10 metres from any watercourse or surface water drain.

#### *Coatings and treatment*

**19.** The undertaker must ensure that any coatings and any treatments are suitable for use in the marine area and are used in accordance with either guidelines approved by the Health and Safety Executive or the Environment Agency.

#### *Spills, etc.*

**20.** The undertaker must—

- (a) store, handle, transport and use fuels, lubricants, chemicals and other substances so as to prevent releases into the marine area, including bunding of 110% of the total volume of all reservoirs and containers;
- (b) report any spill of oil, fuel or chemicals into the marine area to the MMO Marine Pollution Response Team, the harbour master and the Maritime and Coastguard Agency within 12 hours of the spill occurring; and
- (c) store all waste in designated areas that are isolated from surface water drains and open water and are bunded.

#### *Removal of temporary structures etc.*

**21.** The undertaker must remove all equipment, temporary structures, waste and debris associated with the licensed activities within 10 business days of the completion of those activities, unless otherwise agreed in writing by the MMO.

#### *Dropped objects*

**22.**—(1) All dropped objects must be reported to the harbour authority using the Dropped Object Procedure Form within six hours of the undertaker becoming aware of an incident.

(2) On receipt of the Dropped Object Procedure Form, the harbour authority may require relevant surveys to be carried out by the undertaker (such as side scan sonar), and the harbour authority may require obstructions to be removed from the seabed at the undertaker's expense, if it is reasonable to do so.

(3) The local MMO office must receive a copy of this notification no later than 24 hours after submission.

*Notice of completion of licenced activity*

23. The undertaker must inform the local MMO office and MMO Marine Licensing Team, in writing no more than 10 business days following the completion of the last licenced activity.

## PART 5

### PROCEDURE FOR THE DISCHARGE OF CONDITIONS

*Meaning of “application”*

24. In this Part, “application” means a submission by the undertaker for approval of—
- (a) details of the licenced activity under paragraph 12;
  - (b) a piling method statement under paragraph 13;
  - (c) a navigation management plan under paragraph 14;
  - (d) an archaeological written scheme of investigation and protocol for archaeological discoveries under paragraph 15;
  - (e) a marine pollution contingency plan under paragraph 16; and
  - (f) a marine mammal mitigation protocol under paragraph 17.

*Further information regarding application*

25.—(1) The MMO may request in writing such further information from the undertaker as is necessary to enable the MMO to consider the application.

(2) If the MMO does not make a request under sub-paragraph (1) within 30 business days of the day immediately following that on which the application is received by the MMO, it is deemed to have sufficient information to consider the application and is not entitled to request further information after this date without the prior agreement of the undertaker.

*Determination of application*

- 26.—(1) In determining the application the MMO may have regard to—
- (a) the application and any supporting information or documentation;
  - (b) any further information provided by the undertaker in accordance with paragraph 25; and
  - (c) such matters as the MMO reasonably thinks are relevant.
- (2) Having considered the application the MMO must—
- (a) grant the application unconditionally;
  - (b) grant the application subject to conditions as the MMO thinks fit; and
  - (c) refuse the application.
- (3) In determining an application, the MMO may discharge its obligations under sub-paragraph (2)(a), (b) or (c) separately in respect of a part of the application only, where it is reasonable to do so.

*Notice of determination*

27.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the undertaker of the determination of the application within 13 weeks from the day immediately following that on which the application is received by the MMO, or as soon as reasonably practicable after that date.

(2) Where the MMO has made a request under paragraph 25, the MMO must give notice to the undertaker of the determination of the application within 13 weeks from the day immediately

following that on which the further information is received by the MMO, or as soon as reasonably practicable after that date.

(3) Where the MMO determines it is not reasonably practicable to make a determination in accordance with sub-paragraphs (1) and (2) in 13 weeks, it must notify the undertaker as soon as reasonably practicable and provide confirmation in writing of the intended determination date.

(4) Where the MMO refuses the application the refusal notice must state the reasons for the refusal.

## PART 6

### CHANGES TO THE LICENCE

**28.**—(1) In the event that the undertaker wishes to undertake the licensed activity contrary to the conditions of this licence, it must inform the MMO at the earliest opportunity and request a variation to the conditions of this licence.

(2) The undertaker must not carry out any licensed activity contrary to the conditions of this licence until a variation to the licence has been approved by the MMO pursuant to its powers under section 72(3) of the 2009 Act.

(3) The MMO will grant the variation to this licence within 13 weeks from the day immediately following that on which the variation was requested, or as soon as reasonably practicable after that date, subject to the undertaker providing updated details of the licenced activity in accordance with paragraph 12 and adequately justifying the requested variation to the reasonable satisfaction of the MMO.

SCHEDULE 10

Article 48

DOCUMENTS AND PLANS TO BE CERTIFIED

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>
Access and rights of way plans	4.5	0.0
Book of reference	3.3	0.0
Combined heat and power assessment	5.7	0.0
Design and access statement	5.3	0.0
Environmental statement	Volume 1, 6.2 Volume 2, 6.3 Volume 3, 6.4	0.0
Flood risk assessment	6.4.13	0.0
Indicative generating station plans	4.9	0.0
Indicative wharf plans	4.11	0.0
Land plan and Crown land plan	4.2	0.0
Outline landscape and ecological mitigation strategy	7.4	0.0
Outline code of construction practice	7.1	0.0
Outline construction traffic management plan	7.2	0.0
Outline lighting strategy	7.5	0.0
Outline marine mammal mitigation protocol	9.12	0.0
Outline surface water drainage strategy	9.4	0.0
Outline written scheme of investigation	7.3	1.0
Works plans	4.3	0.0

## **EXPLANATORY NOTE**

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

This Order grants development consent for, and authorises Alternative Use Boston Projects Ltd (“AUBP”) (referred to in this Order as the undertaker) to construct, operate and maintain a generating station with a capacity of over 50 megawatts but below 300 megawatts.

The Order also permits the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the documents referred to in Schedule 10 (documents and plans to be certified) to this Order and certified in accordance with article 48 of the Order (certification of documents, etc.) may be inspected free of charge during working hours at the offices of AUBP, 25 Priestgate, Peterborough PE1 1JL.





**202[ ] No. 0000**

**INFRASTRUCTURE PLANNING**

The Boston Alternative Energy Facility Order 202[ ]