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STATUTORY INSTRUMENTS

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**2022 No. 436**

**INFRASTRUCTURE PLANNING**

**The Little Crow Solar Park Order 2022**

*Made* - - - - - *5th April 2022*

*Coming into force* - - - - - *27th April 2022*

**CONTENTS**

**PART 1**

**PRELIMINARY**

1. Citation and commencement
2. Interpretation

**PART 2**

**PRINCIPAL POWERS**

3. Development consent etc. granted by the Order
4. Maintenance of authorised development
5. Consent to transfer benefit of Order
6. Disapplication, application and modification of legislative provisions
7. Defence to proceedings in respect of statutory nuisance

**PART 3**

**PUBLIC FOOTPATH**

8. Temporary closure and diversion of public footpath

**PART 4**

**SUPPLEMENTAL POWERS**

9. Discharge of water
10. Authority to survey and investigate the land

**PART 5**

**OPERATIONS**

11. Operation of generating station

PART 6  
MISCELLANEOUS AND GENERAL

12. Removal of human remains
13. Operational land for the purposes of the 1990 Act
14. Certification of plans, etc.
15. Service of notices
16. Felling or lopping of trees or removal of hedgerows
17. Arbitration
18. Requirements, appeals, etc.
19. Application of landlord and tenant law
20. Protective Provisions

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SCHEDULES

- SCHEDULE 1 — AUTHORISED DEVELOPMENT
- SCHEDULE 2 — REQUIREMENTS
- PART 1 — REQUIREMENTS
- PART 2 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS
- SCHEDULE 3 — PUBLIC FOOTPATH TO BE TEMPORARILY CLOSED AND DIVERTED
- SCHEDULE 4 — HEDGEROWS
- PART 1 — REMOVAL OF IMPORTANT HEDGEROWS
- PART 2 — REMOVAL OF HEDGEROWS
- SCHEDULE 5 — ARBITRATION RULES
- SCHEDULE 6 — PROTECTIVE PROVISIONS
- PART 1 — PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
- PART 2 — FOR THE PROTECTION OF ANGLIAN WATER
- PART 3 — FOR PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
- PART 4 — FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC

An application has been made to the Secretary of State under section 37 of the Planning Act 2008<sup>(a)</sup> (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>(b)</sup> for an Order granting development consent.

The application was examined by a single appointed person (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<sup>(c)</sup>.

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(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of and Schedule 13 to the Localism Act 2011 (c. 20).  
(b) S.I. 2009/2264.  
(c) S.I. 2010/103, amended by S.I. 2012/635.

The single appointed person having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the recommendations and report of the single appointed person, and taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017<sup>(a)</sup> has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

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

## PART 1

### PRELIMINARY

#### **Citation and commencement**

**1.** This Order may be cited as the Little Crow Solar Park Order 2022 and comes into force on 27th April 2022.

#### **Interpretation**

**2.**—(1) In this Order except where provided otherwise—

“the 1961 Act” means the Land Compensation Act 1961<sup>(b)</sup>;

“the 1980 Act” means the Highways Act 1980<sup>(c)</sup>;

“the 1989 Act” means the Electricity Act 1989<sup>(d)</sup>;

“the 1990 Act” means the Town and Country Planning Act 1990<sup>(e)</sup>;

“the 1991 Act” means the New Roads and Street Works Act 1991<sup>(f)</sup>;

“the 2008 Act” means the Planning Act 2008<sup>(g)</sup>;

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

“apparatus” has the same meaning as in section 105(1) of the 1991 Act;

“archaeological management plan” means the document certified as the archaeological management plan for the purposes of this Order under article 14 (certification of plans, etc);

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

“battery energy storage” means equipment used for the storage of electrical energy by battery;

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

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(a) S.I. 2017/572.  
(b) 1961 c. 33  
(c) 1980 c. 66.  
(d) 1989 c. 29.  
(e) 1990 c. 8.  
(f) 1991 c. 22.  
(g) 2008 c. 29.

“cable circuit” means an electrical conductor necessary to transmit electricity between two points within the authorised development and may include one or more auxiliary cables for the purpose of gathering monitoring data;

“CCTV” means a closed circuit television security system;

“commence” means to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than site preparation works, and “commencement” and “commenced” must be construed accordingly;

“construction compound” means a compound including central offices, welfare facilities, accommodation facilities, storage and parking for construction of the authorised development and other associated facilities;

“electronic transmission” means a communication transmitted—

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

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

“environmental statement” means the document certified by the Secretary of State as the environmental statement for the purposes of this Order under article 14 (certification of plans, etc);

“hedgerow plan” means the plan identifying hedgerows and important hedgerows and certified by the Secretary of State for the purposes of this Order under article 14 (certification of plans, etc);

“highway” and “highway authority” have the same meaning as in the 1980 Act<sup>(a)</sup>;

“inverter” means electrical equipment required to convert direct current power generated by the solar panels to alternating current power;

“land plan including Order limits” means the plan certified by the Secretary of State as the land plan including Order limits for the purposes of this Order under article 14 (certification of plans, etc);

“LEMP” means the landscape and ecological plan approved pursuant to requirement 10;

“local planning authority” means the planning authority for North Lincolnshire;

“maintain” includes inspect, upkeep, repair, adjust, alter, remove, reconstruct and replace in relation to the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of “maintain” must be construed accordingly;

“mounting structure” means a frame or rack with posts made of galvanised steel or other material pushed into the ground to support the solar panels;

“Order limits” means the limits shown on the land plan including Order limits within which the authorised development may be carried out;

“outline BSMP” means the plan certified by the Secretary of State as the battery safety management plan for the purposes of this Order under article 14(certification of plans, etc);

“outline CEMPs” means the outline construction environmental management plan and the outline construction environmental management plan for biodiversity certified by the Secretary of State as the outline CEMPs for the purposes of this Order in accordance with article 14 (certification of plans, etc);

“outline CTMP” means the document certified by the Secretary of State as the outline construction traffic management plan for the purposes of the Order in accordance with article 14 (certification of plans, etc);

“outline decommissioning strategy” means the document certified as the outline decommissioning strategy by the Secretary of State for the purposes of this Order under article 14 (certification of plans, etc);

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(a) “highway” is defined in section 328 (1) for “highway authority” see Section 1.

“outline LEMP” means the document certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order in accordance with article 14 (certification of plans, etc);

“outline soil management plan” means the document certified by the Secretary of State as the outline soil management plan for the purposes of this Order in accordance with article 14 (certification of plans, etc);

“proposed temporary diversion of public footpath 214 plan” means the plan showing footpath 214 and its proposed temporary diversion certified by the Secretary of State for the purposes of this Order under article 14 (certification of plans, etc);

“requirement” means those matters set out in Part 1 of Schedule 2 (requirements) and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of that Part of that Schedule with the same number;

“site preparation works” means operations consisting of pre-construction surveys and/or monitoring, site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements;

“solar panel” means a solar photovoltaic panel designed to convert solar irradiance to direct current electrical energy fitted to a mounting structure;

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

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act<sup>(a)</sup>

“substation” means a compound containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation with welfare facilities, means of access and other associated facilities;

“transformer” means a structure containing electrical switch gear serving to transform electricity generated by the solar panels and imported and exported by the batteries to a higher voltage;

“undertaker” means INRG Solar (Little Crow) Limited company number 11136483, whose registered office is at 93 Leigh Road, Eastleigh, Hants, England SO50 9DQ;

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

“work” means a work set out in Schedule 1 (authorised development); and

“works plan” means the plan certified by the Secretary of State as the works plan for the purposes of this Order in accordance with article 14 (certification of plans, etc).

(2) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between points on a work are taken to be measured along that work.

(3) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(4) In this Order “includes” must be construed without limitation unless the contrary intention appears.

(5) References in this Order to any statutory body include that body’s successor bodies as from time to time have jurisdiction in relation to the authorised development.

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(a) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

## PART 2

### PRINCIPAL POWERS

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

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

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plan.

(3) Notwithstanding anything in this Order or shown on the works plan the undertaker may construct either Work No. 2A or Work No. 2B but for the avoidance of doubt may not construct both of Work No. 2A and Work No. 2B under the powers conferred by this Order.

(4) The undertaker must notify the local planning authority prior to the commencement of any works comprised in Work No.2A or Work No. 2B which of those works it intends to construct.

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

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

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

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

5.—(1) Except as otherwise provided in this Order, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to paragraph (4), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed,

except where paragraph (6) applies, in which case no consent of the Secretary of State is required.

(3) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, except in paragraphs (5) and (7) are to include references to the transferee or the lessee.

(4) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application.

(5) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (2)—

- (a) the benefit transferred or granted (“the transferred benefit”) must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) is subject to the same restrictions, liabilities and

obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(6) This paragraph applies to any provisions of this Order and its related statutory rights where the transferee or lessee is the holder of a licence under section 6 (licensing authorising supply etc) of the 1989 Act.

(7) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State and the local planning authority.

(8) The notice required under paragraphs (4) and (7) must—

(a) state—

- (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
- (ii) subject to paragraph (9), the date on which the transfer will take effect;
- (iii) the provisions to be transferred or granted; and
- (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (5)(c), will apply to the person exercising the powers transferred or granted; and

(b) be accompanied by—

- (i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
- (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(9) The date specified under paragraph (8)(a)(ii) in respect of a notice served in respect of paragraph (7) must not be earlier than the expiry of fourteen days from the date of the receipt of the notice.

(10) The notice given under paragraph (7) 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.

### **Disapplication, application and modification of legislative provisions**

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

“(k) or for carrying out or the maintenance of development which has been authorised by the Little Crow Solar Park Order 2022.”

(2) Any development or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether expressed or otherwise) following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of Sections 160 (development without development consent) and 161 (breach of terms of order granting development consent) of the 2008 Act **(b)**.

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

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

(a) the defendant show that the nuisance —

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(a) S.I. 1997/1160.

(b) Sections 160 and 161 were amended by S.I.2015/664. Section 161 was also amended by section 112 (2) of and paragraph 4 of Part 1 of Schedule 8 to the Marine and Coastal Access Act 2009 (c.23).

(c) 1990 c. 43.

- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(a); or
  - (ii) is a consequence of the construction maintenance or decommissioning of the authorised development and cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and cannot reasonably be avoided.
- (2) Section 61(9) (prior consent for work on construction sites) 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.

### PART 3

#### PUBLIC FOOTPATH

##### **Temporary closure and diversion of public footpath**

8. The undertaker may, during the construction and decommissioning of the authorised development, temporarily close public footpath 214 as specified in column (3) of Schedule 3 (public footpath to be temporarily closed and diverted) to the extent specified in column (5) (extent of temporary closure) of Schedule 3, and must provide the temporary substitute public footpath specified in column (6) (extent of temporary diversion) of Schedule 3 for the period during which the footpath is temporarily closed.

### PART 4

#### SUPPLEMENTAL POWERS

##### **Discharge of water**

9.—(1) Subject to paragraphs (3) and (4) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use 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 under 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(b).

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

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

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(a) 1974 c. 40. Section 61(9) was amended by Section 162 and paragraph 15 of Schedule 3 to the Environment Protection Act 1990 (c. 25). There are other amendments to 1974 Act which are not relevant to this Order.

(b) 1991 c. 56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c. 43) and sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to the section which are not relevant to this Order.

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a permit granted by the Environment Agency.
- (6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (7) This article does not authorise a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2016(a).
- (8) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
  - (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.
- (9) 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 is deemed to have granted consent or given approval, as the case may be.

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

- 10.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—
- (a) survey or investigate the land;
  - (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
  - (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
  - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required entering the land, produce written evidence of their authority to do so; and
  - (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes may be made under this article:
- (a) in land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority
- but such consent must not be unreasonably withheld.

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(a) S.I. 2016/1154 “Groundwater activity” is defined in paragraph 3 of Schedule 22. “Water discharge activity” is defined in paragraph 3 of Schedule 21.

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

(6) If either a highway authority or a 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 is deemed to have granted consent.

## PART 5 OPERATIONS

### **Operation of generating station**

**11.**—(1) The undertaker is authorised to operate and use the generating station for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

## PART 6 MISCELLANEOUS AND GENERAL

### **Removal of human remains**

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

(2) Before any such remains are removed from the Order limits the undertaker must give notice of the intended removal, describing the Order limits and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place within or near the Order limits.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to North Lincolnshire Council.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred within the Order limits may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), 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 (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must 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.

(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—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains within the Order limits; or
- (b) such notice is given and no application is made under paragraph (6) 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 (6) 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 (9) 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 are to be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

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

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General 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 (8) must be sent by the undertaker to the local authority mentioned in paragraph (3).

(11) No notice is required under paragraph (2) 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.

(12) In this article references to a relative of the deceased are to a person who—

- (a) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
- (b) is, or is a child of, a brother, sister, uncle or aunt of the deceased; or
- (c) is the lawful executor of the estate of the deceased; or
- (d) is the lawful administrator of the estate of the deceased.

(13) 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.

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

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

(16) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950<sup>(b)</sup> do not apply to the authorised development.

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

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

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

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

- (a) archaeological exclusion zone – whole area plan (document reference 2.22 LC DRW);
- (b) environmental statement (document reference 6 LC ES CH (Chapters 1-11) as submitted on 4 December 2020, as updated by the following documents —
  - (i) 6.4A LC ES CH 4 (Development Proposal) (9 August 2021);
  - (ii) 6.6B LC ES CH 6 (Landscape and Visual Impact) (9 August 2021);
  - (iii) 6.7A LC ES CH 7 (Ecology) (9 August 2021);
  - (iv) 6.10A LC ES CH 10 (Agriculture) (9 August 2021);
  - (v) 6.11A LC ES CH 11 (8 April 2021);
  - (vi) 7.12C LC TA 4.5 Air Quality and Carbon Assessment (31 August 2021);
  - (vii) 7.16A LC TA 4.9 Noise Impact Assessment (24 May 2021);
  - (viii) 7.21B LC TA 6.5 Detailed Landscape Proposals (9 August 2021);
  - (ix) 7.29B LC TA 7.9 Habitats Regulation Statement – No Significant Effects report (NSER) (9 August 2021);
  - (x) flood risk assessment and drainage strategy (document reference 7.3 LC TA3.1);
  - (xi) 7.35A LC TA 9.1 Transport Statement (11 January 2021);
  - (xii) outline BSMP (environmental statement technical appendix 7.14 LC TA4.7);
  - (xiii) outline CEMPs (environmental statement technical appendix 7.8D LC TA4.1 (31 August 2021) & 7.27 LC TA7.7);
  - (xiv) outline CTMP (environmental statement technical appendix 7.36 LC TA9.2);
  - (xv) outline soil management plan (environmental statement technical appendix 7.11 LC TA4.4);
  - (xvi) outline decommissioning strategy (environmental statement technical appendix 7.9C LC TA4.2 (31 August 2021); and
  - (xvii) outline LEMP (environmental statement technical appendix 7.28D LC TA7.8)(31 August 2021);
- (c) hedgerow plan (document reference 2.40 LC DRW);
- (d) land plan including Order limits (document reference 2.1 LC DRW);
- (e) proposed temporary diversion of public footpath 214 plan (document reference 2.39 LC DRW);

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(a) 1857 c. 81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014, section 2 (January 1, 2015: substitution has effect subject to transitional and saving provisions specified in S.I. 2014/2077, paragraphs 1 and 2).

(b) S.I. 1950/792.

- (f) works details – Key B2 - sheet 5 of 7 (document reference 2.15 LC DRW);
- (g) works plan (document reference 2.8 LC DRW);
- (h) archaeological management plan (document reference 9.42 LC OTH)

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

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

### **Service of notices**

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978<sup>(a)</sup> 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 the 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 name or 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 a 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) the notice or document is 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 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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<sup>(a)</sup> 1978 c. 30.

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

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

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

(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.

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

**16.**—(1) The undertaker may fell or lop any tree, or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, or shrub—

- (a) from obstructing or interfering with the construction, maintenance operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), 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, must be determined under Part 1 of the 1961 Act.

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

- (a) remove those parts of the important hedgerows within the Order limits and specified in Schedule 4 part 1 (removal of important hedgerows); and
- (b) remove those parts of the hedgerows as are within the Order limits and specified in Schedule 4 part 2 (removal of hedgerows).

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

### **Arbitration**

**17.**—(1) Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 5 (Arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order shall not be subject to arbitration.

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(a) S.I. 1997/1160.

### **Requirements, appeals, etc.**

**18.**—(1) Where an application is made to, or a request is made of, the local planning authority or any other relevant person for any agreement or approval requirement or contemplated by any of the provisions of this Order, such agreement or approval must, if given, be given in writing and must not be unreasonably withheld or delayed.

(2) Part 2 (procedure for discharge or requirements) of Schedule 2 (Requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements in Part 1 of that Schedule.

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

**19.**—(1) This article applies to—

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

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

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

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

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

### **Protective Provisions**

**20.** Schedule 6 (protective provisions) has effect.

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

5th April 2022

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

## SCHEDULES

### SCHEDULE 1

Article 2

#### AUTHORISED DEVELOPMENT

##### **In the administrative area of North Lincolnshire**

**1.** The construction, operation, maintenance and decommissioning of a nationally significant infrastructure project as defined in sections 14(1) and 15 of the 2008 Act with associated development under section 115(1)(b) of the 2008 Act.

The nationally significant infrastructure project comprises a generating station with a gross electrical output of over 50 megawatts alternating current comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—

**Work No. 1** – a generating station comprising: arrays of ground-mounted solar panels with a gross electrical output of over 50 megawatts alternating current comprising—

- (a) solar panels;
- (b) mounting structure;
- (c) internal access tracks;
- (d) inverters;
- (e) transformers;
- (f) cable trenches;
- (g) cable circuits;
- (h) switch gear and ancillary equipment
- (i) earthing circuits;
- (j) communication circuits;
- (k) CCTV and mountings; and
- (l) internal security fencing with gates

Along with associated development within the meaning of Section 115(2) of the 2008 Act comprising—

**Work No. 2A** – a battery energy storage system of up to 90 megawatts comprising—

- (a) containerised battery units;
- (b) inverters;
- (c) client switch room containers housing the switch gear;
- (d) transformers;
- (e) cable trenches;
- (f) cable circuits;
- (g) communication circuits;
- (h) vehicle parking;
- (i) earthing circuits;
- (j) CCTV and mountings;
- (k) internal security fencing with gates; and
- (l) internal access tracks;

**Work No. 2B** – a battery energy storage system of up to 90 megawatts comprising—

- (a) containerised battery units;
- (b) inverters;
- (c) client switch room container housing the switch gear;
- (d) transformers;
- (e) cable trenches;
- (f) cable circuits;
- (g) communication circuits;
- (h) vehicle parking;
- (i) earthing circuits;
- (j) CCTV and mountings;
- (k) internal access tracks; and
- (l) internal security fencing with gates;

**Work No. 3** – formation of ecological corridors comprising—

- (a) planting and ecological works incorporating the biodiversity objectives and management prescriptions set out in the LEMP;
- (b) internal access tracks;
- (c) fencing archaeological exclusion zone;
- (d) swale buffer;
- (e) temporary diversion of public footpath;
- (f) underground connection to the electricity network;
- (g) cable trenches;
- (h) cable circuits;
- (i) hedge buffer;
- (j) ancient woodland buffer;
- (k) pond buffer;
- (l) CCTV and mountings; and
- (m) bunds, embankments and swales.

**Work No. 4** – construction of substation building and compound comprising—

- (a) customer switch room;
- (b) control room building welfare unit and WC;
- (c) car parking;
- (d) gantry with voltage and current transformers ;
- (e) security fencing with gates;
- (f) circuit breakers;
- (g) earthing circuits;
- (h) access track with separate access provision for District Network Operator;
- (i) cable trenches;
- (j) cable circuits;
- (k) cess pit;
- (l) floodlight columns;
- (m) pad mounted transformer;
- (n) sealing end structures;
- (o) high level 132 kV busbars; and

- (p) low level disconnectors.

**Work No. 5** – upgrade to main access track comprising—

- (a) laying out and surfacing of passing bays and access track;
- (b) vegetation removal;
- (c) planting and ecological works incorporating the biodiversity objectives and management prescriptions in the LEMP; and
- (d) drainage channels.

**Work No. 6** – perimeter development buffer comprising—

- (a) security fencing, boundary treatment and other means of enclosure;
- (b) bunds, embankments and swales;
- (c) temporary diversion of public footpath during construction and decommissioning;
- (d) ancient woodland buffer;
- (e) public footpath buffer;
- (f) pond buffer;
- (g) hedge buffer;
- (h) swale buffer;
- (i) mitigation planting and maintenance corridor;
- (j) planting and ecological works incorporating the biodiversity objectives and management prescriptions set out in the LEMP; and
- (k) internal access tracks.

**Work No. 7** – temporary construction and decommissioning compound comprising—

- (a) installation of portable cabins providing office and welfare facilities;
- (b) parking;
- (c) storage containers;
- (d) secure storage compound;
- (e) temporary hardstanding; and
- (f) internal security fencing with gates.

**Site Wide Works**

In connection with the construction of Work Nos. 1-7 above and to the extent that they do not form any part of any such work, further associated development comprising such other works as may be necessary or expedient for the purpose of or in connection with the relevant part of the authorised development and which fall within the scope of work assessed by the environmental statement within the Order limits including—

- (a) foundations, drainage, fencing, culverts and lighting;
- (b) bunds, embankments and swales;
- (c) jointing bays, cable ducts, cable protection, joint protection, manholes, construction of crossing structures, kiosks, marker, posts, underground cable marker, tiles and tape, and lighting and other works associated with cable laying;
- (d) altering the course of or otherwise constructing over or under non-navigable watercourses;
- (e) site preparation works, site clearance; earthworks (including soil stripping and storage, site levelling); remediation of contamination;
- (f) working sites, storage areas, temporary vehicle parking, ramps and other means of access, hardstanding, internal roads and tracks, laydown areas, welfare facilities, construction

- lighting, haulage roads and other machinery, apparatus, works and conveniences and their restoration;
- (g) landscape and biodiversity mitigation and enhancement;
  - (h) horizontal directional drilling; and
  - (i) works for the benefit or protection of land affected by the authorised development.

## SCHEDULE 2 REQUIREMENTS

Article 2

### PART 1 REQUIREMENTS

#### **Interpretation**

**1.** In this Schedule—

“BSMP” means battery safety management plan;

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

“CEMPs” means construction environmental management plan and construction environmental management plan for biodiversity;

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990;

“CTMP” means construction traffic management plan;

“first export date” means the date on which the generating station first exports electricity to the Northern Powergrid network on a commercial basis;

“landowner” means the freehold owner of the land within the Order limits on which the relevant part of Work No. 5 is constructed;

“phase” means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the local planning authority under requirement 5 (phases of authorised development); and

“substation operator” means the operator of the substation from time to time constructed as part of Work No. 4.”

#### **Time limit**

**2.** The authorised development must commence no later than the expiration of five years beginning with the date on which this Order comes into force.

#### **Expiry of development consent**

**3.—(1)** The authorised development must cease generating electricity on a commercial basis no later than the ~~35th~~ 45th anniversary of the first export date from Work No.1.

(2) Confirmation of the first export date for Work No.1 must be provided by the undertaker to the local planning authority within one month of its occurrence.

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(a) 1971 c. 80.

### **Decommissioning and site restoration**

4.—(1) Not less than 6 months before the ~~35<sup>th</sup>~~ 45<sup>th</sup> anniversary of the first export date, a decommissioning and site restoration scheme must be submitted to the local planning authority for its approval. The decommissioning and site restoration scheme(s) must be in accordance with the outline decommissioning strategy.

(2) The decommissioning and site restoration scheme(s) must include provision for—

- (a) removal of all above-ground elements of the relevant part of the authorised development, with the exception of the access tracks (Work No.5) where the landowner has confirmed to the undertaker that it requires their retention and the substation (Work No. 4) where the substation operator has confirmed to the undertaker that its retention is required;
- (b) removal of any cabling which is up to five hundred millimetres below ground level; and
- (c) restoration of the areas disturbed by the relevant part of the authorised development.

(3) The decommissioning of the authorised development and the restoration of the land affected by the authorised development must be undertaken within the time period set out in accordance with the approved decommissioning and site restoration scheme(s).

### **Phases of authorised development**

5.—(1) The authorised development must not be commenced until a written scheme setting out the phases of construction of the authorised development has been submitted to and approved by the local planning authority.

(2) The authorised development must be implemented in accordance with the approved phasing scheme.

### **Detailed design approval**

6.—(1) No phase of the authorised development is to be commenced until written details of the following for that phase have been submitted to and approved by the local planning authority—

- (a) layout;
- (b) scale;
- (c) proposed finished ground levels and elevations;
- (d) external appearance;
- (e) hard-surfacing materials;
- (f) parking and circulation areas;
- (g) refuse or other storage units, signs and lighting;
- (h) power and communications cables and pipelines;
- (i) fencing;
- (j) security measures; and
- (k) any mitigation measures necessary to address noise impacts.

(2) The details to be submitted for approval must accord with—

- (a) the principles and assessments set out in the environmental statement; and
- (b) the works plan.

(3) The authorised development must be carried out in accordance with the approved details.

### **Battery Safety Management Plan (BSMP)**

7.—(1) Prior to the commencement of either Work No. 2A or Work No. 2B as notified to the local planning authority under Article 3(4) a BSMP must be submitted to and approved by the local planning authority.

(2) The submitted BSMP must either accord with the outline BSMP or detail such changes as the undertaker considers are required.

(3) In the event that the submitted BSMP proposes changes to the outline BSMP the local planning authority must not approve the BSMP until it has consulted with the Health and Safety Executive and Humberside Fire and Rescue Service.

### **Construction Environmental Management Plans (CEMPs)**

**8.**—(1) No phase of the authorised development is to be commenced until a CEMP for that phase has been submitted to and approved by the local planning authority. Any CEMP submitted for approval must be in accordance with the outline CEMP and any approved CEMP must be adhered to for the duration of the works in the phase of the authorised development to which the CEMP relates.

(2) The CEMP for each phase of the authorised development must provide details of—

- (a) community liaison;
- (b) complaints procedures;
- (c) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise and vibration);
- (d) a soil management plan which must accord with the outline soil management plan;
- (e) site waste and materials management measures;
- (f) pollution control measures to prevent the introduction of any hazardous substances;
- (g) security measures and use of artificial lighting;
- (h) a protocol requiring consultation with the Environment Agency in the event that unexpected contaminated land is identified during ground investigation or construction;
- (i) details of out of hours working procedures; and
- (j) a construction and environmental management plan for biodiversity that must accord with the outline construction and environmental management plan for biodiversity.

### **Construction Traffic Management Plan (CTMP)**

**9.**—(1) No phase of the authorised development is to be commenced until a CTMP covering that phase and in accordance with the outline CTMP has been submitted to and approved by the local planning authority.

(2) The CTMP must include details of—

- (a) associated traffic movements; including delivery vehicles and staff/construction vehicle movements;
- (b) traffic management requirements on the adjoining public highway of the B1208, B1207 and the A18; and
- (c) a condition survey for any road which will be affected by undertaking that phase of the authorised development and a further condition survey following that phase of the construction works. In the event that any defects are identified in that condition survey that are directly attributable to that phase of the construction works of the authorised development, details of how those defects are to be remediated by the undertaker.

(3) The CTMP must be implemented as approved.

### **Landscape and Ecological Management Plan (LEMP)**

**10.**—(1) No phase of the authorised development is to be commenced until a LEMP covering that phase which accords with the outline LEMP has been submitted to and approved by the local planning authority.

(2) The LEMP must include—

- (a) details of the method of protection of existing landscape features and habitats during the construction, operation and decommissioning stage of the authorised development;
  - (b) details of habitat creation, including new native hedgerow planting adjacent to the proposed security fencing along the line of the existing footpath, replanting of any breaks (gaps) in excess of 1 metre in existing native hedgerows within the Order limits adjacent to the footpath and sowing of wildflower seed along the margins between the footpath and the hedgerow/ security fence boundaries;
  - (c) details of ongoing management including seasonal grazing regime and other measures shown in table 7.5 at chapter 7 of the environmental statement including the annual review of the need for any additional mitigation planning work, during the lifetime of the authorised development;
  - (d) a timetable for the landscape management of the land within the Order limits during the lifetime of the authorised development; and
  - (e) landscaping details for the area allocated for Work No.2A in the event that Work No. 2B is constructed.
- (3) The LEMP must be implemented as approved.

### **Construction hours**

**11.**—(1) Subject to sub-paragraph (2), no construction works are to take place except between the hours of—

- (a) 07:00 and 18:00 Monday to Friday; and
  - (b) 08:00 and 13:30 on Saturday.
- (2) The following works are permitted outside the hours referred to in sub-paragraph (1)—
- (a) emergency works; and
  - (b) works which do not cause noise that is audible at the boundary of the Order limits.

(3) Any emergency works carried out under sub-paragraph (2)(a) must be notified to the local planning authority within 72 hours of their commencement.

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

**12.**—(1) No phase of the authorised development is to be commenced until written details of the surface and foul water drainage system for that phase have been submitted to and approved by the local planning authority.

(2) The details submitted under sub-paragraph (1) must include the plans and strategies referred to in Appendix 3.1 -flood risk assessment and drainage strategy of the environmental statement (document reference 7.3 LC TA3.1).

(3) The surface and foul water drainage system for the relevant part of the authorised development must be constructed in accordance with the approved details.

### **Archaeology**

**13.**—(1) The authorised development must be carried out in accordance with the archaeological management plan.

(2) No phase of the authorised development is to be commenced until the archaeological exclusion zone around Gokewell Priory shown on the Archaeological Exclusion Zone – Whole Area Plan (document reference 2.22 LC DRW) has been installed as shown on the works plan.

(3) No digging or use of piled mounting frames shall be undertaken within the archaeological “no-dig” zone identified on the Works Details – Key B2 - Sheet 5 of 7 (document reference 2.15 LC DRW).

(4) No phase within the authorised development is to be commenced until a written scheme for the investigation of areas of archaeological interest within that phase has been submitted to and approved by the local planning authority.

(5) The scheme approved under sub-paragraph (4) must be in accordance with the archaeological management plan and identify any areas where a programme of archaeological investigation is required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(6) Any archaeological works or programme of archaeological investigation carried out under the approved scheme for investigation must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(7) Any archaeological works or programme of archaeological investigation must be carried out in accordance with the scheme approved under sub-paragraph (4).

(8) Within six months of the commencement of the authorised development the undertaker must submit a scheme to the local planning authority detailing proposals for two interpretation boards explaining the significance of Gokewell Priory. The scheme shall include details of the proposed location, size, materials, content, means of fixing and maintenance of the proposed boards. The scheme shall be implemented as approved within six months following the completion of the authorised development or six months following the approval of the scheme whichever is the later.

### **Protected Species**

**14.**—(1) No work, including site preparation works, shall be commenced in any phase of the authorised development until final pre-construction survey work has been carried out for that phase to establish whether a protected species is present on any of the land affected, or likely to be affected, by the authorised development or in any of the trees to be lopped or felled as part of that phase.

(2) Where a protected species is shown to be present, the authorised development must not be commenced within that phase until a scheme of protection and mitigation measures has been submitted to and approved by the local planning authority in consultation with Natural England.

(3) The authorised development must be carried out in accordance with any scheme approved under sub-paragraph (2).

(4) In this requirement, “protected species” refers to any species defined as a European Protected Species in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017<sup>(a)</sup> or any species to which Part I (wildlife) and Schedule 5 (animals which are protected) of the Wildlife and Countryside Act 1981<sup>(b)</sup> applies.

### **Operational noise**

**15.**—(1) No phase of the authorised development is to commence until an operational noise assessment containing details of how the design of the authorised development has incorporated mitigation to ensure the operational noise rating levels as set out in the environmental statement are to be complied with for that phase has been submitted to and approved by the local planning authority.

(2) The authorised development must be implemented and operated for its duration in accordance with the approved operational noise assessment.

### **Temporary diversion to public footpath**

**16.**—(1) No phase of the authorised development is to be commenced and no decommissioning will be undertaken until a public rights of way management plan for the phase incorporating any

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(a) S.I. 2017/1012.

(b) 1981 c. 69.

part of public footpath 214 shown to be temporarily closed and diverted on the temporary diversion of public footpath plan has been submitted to and, approved by the local planning authority.

(2) The public rights of way management plan must include details of—

- (a) measures to minimise the distance of any sections of the public right of way to be temporarily closed; and
- (b) advance publicity and signage in respect of any sections of public rights of way to be temporarily closed.

(3) Prior to the commencement of any phase of the authorised development and of any decommissioning the public rights of way management plan must be implemented as approved.

### **Requirement for written approval**

17. Where the approval, agreement or confirmation of the Secretary of State, local planning authority or another person is required under a requirement that approval or confirmation must be given in writing.

### **Amendments to approved details**

18.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the local planning authority, the approved details must be carried out as approved unless an amendment or variation has previously been approved in writing by the local planning authority in accordance with sub-paragraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the local planning authority that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effect from those assessed in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the local planning authority.

## **PART 2**

### **PROCEDURE FOR DISCHARGE OF REQUIREMENTS**

#### **Applications made under requirements**

19.—(1) Where an application has been made to the local planning authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, or for any consent, agreement or approval further to any document referred to in any such requirement, the local 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 local planning authority; or
- (b) where further information is requested under paragraph 20 the day immediately following that on which the further information has been supplied by the undertaker, or such longer period as may be agreed in writing by the undertaker and the local planning authority.

(2) In determining any application made to the local planning authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the local 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 local planning authority must provide its reasons for that decision with the notice of the decision.

### **Further information regarding requirements**

**20.**—(1) In relation to any application referred to in paragraph 19, the local planning authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) If the local planning authority considers that further information is necessary and the requirement concerned contained in Part 1 of this Schedule does not specify that consultation with a consultee is required, the local planning authority must, within fourteen 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 local planning authority must issue the application to the consultee within seven days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within seven days of receipt of such a request.

(4) If the local 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.

### **Appeals**

**21.**—(1) Where the undertaker makes an application to a local planning authority, the undertaker may appeal to the Secretary of State in the event that—

- (a) the local planning authority refuses an application for any consent, agreement or approval required by—
  - (i) a requirement contained in Part 1 of this Schedule; or
  - (ii) a document referred to in any requirement contained in Part 1 of this Schedule;
- (b) the local planning authority does not determine such an application within the time period set out in paragraph 19(1), or grants it subject to conditions;
- (c) on receipt of a request for further information pursuant to paragraph 20 of this Part of this Schedule, the undertaker considers that either the whole or part of the specified information requested by the local planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the local planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is 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 time period set out in paragraph 19(1), giving rise to the appeal referred to in sub-paragraph (1);
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local planning authority and any consultee specified under the relevant requirement contained in Part 1 of this Schedule;
- (c) 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 the attention of the appointed person should be sent;

- (d) the local planning authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect of the appeal within ten business days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the applicant on the day on which they are submitted to the appointed person;
- (e) the undertaker must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d) above; and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the ten day period for counter-submissions under sub-paragraph (e).

(3) The appointment of the appointed person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) 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.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the date specified by the appointed person, but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

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

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the local 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.

(7) 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 of the relevant time limits.

(8) 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.

(9) 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 a judicial review.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the local planning authority, the reasonable costs of the appointed person are to be met by the applicant.

(11) On application by the local planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to

be made, the appointed person must have regard to the guidance on costs in the Planning Practice Guidance or any official circular or guidance which may from time to time replace it.

### SCHEDULE 3

Article 8

#### PUBLIC FOOTPATH TO BE TEMPORARILY CLOSED AND DIVERTED

**Table 1**

| <i>(1) Area</i>    | <i>(2) Plan</i>  | <i>(3) Public footpath to be temporarily closed and diverted</i> | <i>(4) Period of diversion</i>          | <i>(5) Extent of temporary closure</i>   | <i>(6) Extent of temporary diversion</i>   |
|--------------------|--|--|---|--|--|
| North Lincolnshire | As shown indicatively on Drawing P17-0718-30 REV: G1 – PROW (document reference 2.39 LC DRW) | Public Footpath 214  | During construction and decommissioning | Between the points marked A-B as shown with a solid black line on the proposed temporary diversion to public footpath 214 plan | From A-C-D-B as shown with a dashed black line on the proposed temporary diversion to public footpath 214 plan |

### SCHEDULE 4

Article 16

#### HEDGEROWS

##### PART 1

#### REMOVAL OF IMPORTANT HEDGEROWS

**Table 2**

| <i>(1) Plan</i>               | <i>(2) Important Hedgerow</i> | <i>(3) Work</i>  |
|-------------------------------|-------------------------------|--|
| Hedgerow Plan ref 2.40 LC DRW | H12                           | Removal of section 16 as shown with a purple circle on the hedgerow plan |
| Hedgerow Plan ref 2.40 LC DRW | H11                           | Removal of section 17 as shown with a purple circle on the hedgerow plan |
| Hedgerow Plan ref 2.40 LC DRW | H11                           | Removal of section 18 as shown with a purple circle on the hedgerow plan |
| Hedgerow Plan ref 2.40 LC DRW | H5                            | Removal of section 19 as shown with a purple circle on                   |

|                               |    |   |
|-------------------------------|----|---|
| Hedgerow Plan ref 2.40 LC DRW | H5 | the hedgerow plan<br>Removal of section 14 as shown with a yellow circle on the hedgerow plan |
|-------------------------------|----|---|

**PART 2**  
**REMOVAL OF HEDGEROWS**

**Table 3**

| <i>(1) Plan</i>               | <i>(2) Hedgerow</i> | <i>(3) Work</i>  |
|-------------------------------|---------------------|--|
| Hedgerow Plan ref 2.40 LC DRW | H1                  | Removal of section 1 as shown with a yellow circle on the hedgerow plan  |
| Hedgerow Plan ref 2.40 LC DRW | H1                  | Removal of section 2 as shown with a purple circle on the hedgerow plan  |
| Hedgerow Plan ref 2.40 LC DRW | H1                  | Removal of section 3 as shown with a purple circle on the hedgerow plan  |
| Hedgerow Plan ref 2.40 LC DRW | H1                  | Removal of section 4 as shown with a purple circle on the hedgerow plan  |
| Hedgerow Plan ref 2.40 LC DRW | H1                  | Removal of section 5 as shown with a purple circle on the hedgerow plan  |
| Hedgerow Plan ref 2.40 LC DRW | H1                  | Removal of section 6 as shown with a purple circle on the hedgerow plan  |
| Hedgerow Plan ref 2.40 LC DRW | H2                  | Removal of section 7 as shown with a purple circle on the hedgerow plan  |
| Hedgerow Plan ref 2.40 LC DRW | H3                  | Removal of section 8 as shown with a purple circle on the hedgerow plan  |
| Hedgerow Plan ref 2.40 LC DRW | H3                  | Removal of section 9 as shown with a purple circle on the hedgerow plan  |
| Hedgerow Plan ref 2.40 LC DRW | H3                  | Removal of section 10 as shown with a purple circle on the hedgerow plan |
| Hedgerow Plan ref 2.40 LC DRW | H3                  | Removal of section 11 as shown with a purple circle on the hedgerow plan |
| Hedgerow Plan ref 2.40 LC DRW | H4                  | Removal of section 12 as shown with a purple circle on the hedgerow plan |
| Hedgerow Plan ref 2.40 LC DRW | H4                  | Removal of section 13 as shown with a purple circle on the hedgerow plan |
| Hedgerow Plan ref 2.40 LC DRW | H6                  | Removal of section 20 as shown with a yellow circle on the hedgerow plan |
| Hedgerow Plan ref 2.40 LC DRW | H7                  | Removal of section 22 as shown with a purple circle on the hedgerow plan |
| Hedgerow Plan ref 2.40 LC DRW | H8                  | Removal of section 21 as shown with a purple circle on the hedgerow plan |
| Hedgerow Plan ref 2.40 LC DRW | H10                 | Removal of section 15 as shown with a purple circle on the hedgerow plan |

## SCHEDULE 5

Article 17

## ARBITRATION RULES

**Primary objective**

1.—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 17 of the Order.

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

**Time periods**

2.—(1) All time periods in these arbitration rules will be measured in days and this is to include weekends, but not bank or public holidays.

(2) Time periods will be calculated from the day after the arbitrator is appointed which must be either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

**Timetable**

3.—(1) The timetable for the arbitration is to be that set out in sub-paragraphs (2) to (4) unless amended in accordance with sub-paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the Claimant must provide both the Respondent and the arbitrator with—

- (a) a written Statement of Claim which describes the nature of the differences between the parties, the legal and factual issues, the Claimant’s contentions as to those issues, the amount of its claim and the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the Claimant’s statements under sub-paragraph (2) by the arbitrator and Respondent, the Respondent must provide the Claimant and the arbitrator with—

- (a) a written Statement of Defence responding to the Claimant’s Statement of Claim, its statement in respect of the nature of the differences, the legal and factual issues in the Claimant’s claim, its acceptance of any element(s) of the Claimant’s claim, its contentions as to those elements of the Claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and
- (c) any objections it wishes to make to the Claimant’s statements, comments on the Claimant’s expert report(s) (if submitted by the Claimant) and explanations for the objections.

(4) Within 7 days of the Respondent serving its statements under sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the arbitrator with—

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

- (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
- (c) any expert report in response to the Respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and
- (e) written submissions in response to the legal and factual issues involved.

### **Procedure**

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. No single pleading is to exceed 30 single-sided A4 pages using 10pt Arial font.

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

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

(4) Within 7 days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the arbitrator advising the parties that he/she is to hold a hearing, the date and venue for the hearing must be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which he/she considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

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

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

- (a) at least 28 days before a hearing, the arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 7 days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator will take these submissions into account in the award.

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

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the submitted information attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(11) The arbitrator's award must include reasons. The parties will accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

### **Arbitrator's powers**

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, including the non-mandatory sections, save where modified by these arbitration rules in this Schedule.

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

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

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice; and
- (b) only for such a period that is necessary to achieve fairness between the parties.

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

### **Costs**

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected/interrelated issues, the arbitrator will consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties will bear them or in what proportion they will be borne by the parties.

(4) The arbitrator will award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

### **Confidentiality**

7.—(1) The parties agree that any hearings held as part of the arbitration will take place in private.

(2) The parties and arbitrator agree that any matters, materials, documents, awards, expert reports and the like are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts or where disclosure is required under any legislative or regulatory requirement.

## SCHEDULE 6

Article 20

## PROTECTIVE PROVISIONS

## PART 1

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

1. For the protection of the affected undertakers referred to in this Part of this Schedule (save for Anglian Water which is protected by Part 2 of this Schedule and Northern Powergrid which is protected by Part 4 of this Schedule) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the affected undertaker concerned.

2. In this Part of this Schedule—

“affected undertaker” means—

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

for the area of the authorised development but, for the avoidance of doubt, does not include the undertaker specified in Part 2 (Anglian Water) and part 4 (Northern Powergrid) of this Schedule, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

“alternative apparatus” means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electric plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991;
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 of that Act,

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

(b) 1991 c. 56.

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; and

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

### **Precedence of the 1991 Act in respect of apparatus in the streets**

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 (water supply) of the 1991 Act.

### **Removal of apparatus**

4.—(1) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (2), afford to the affected 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.

(2) 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 (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) 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 affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 17 (arbitration).

(4) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 17 (arbitration) and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (1) or (2), 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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

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

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the

undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 17 (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 affected 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 affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**6.**—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 4(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 4(1), the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

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

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

(4) If an affected 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 5 apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(1).

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

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

### **Expenses and costs**

**7.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected 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 4(1).

(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, 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 17 (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 affected 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 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 an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**8.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 4(1), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

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

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

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

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Enactments and agreements**

**9.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected 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 ANGLIAN WATER**

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

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

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

“apparatus” means—

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

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

“functions” includes powers and duties;

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

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

“water main” means the 21 inch iron water main (asset number 7293912) within the Order Limits.

**12.** The undertaker must not interfere with, build over or near to any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protective strip which is the strip of land falling 6 metres either side of the water main within the Order limits (including any accessories to it) or 3 metres either side of any other apparatus uncovered by the undertaker during construction or so as to require any special measures that are outside industry standard measures other than in accordance with paragraph 16 below unless otherwise agreed with Anglian Water, such agreement not to be unreasonably withheld or delayed, with such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

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

- (a) any requirement for a permit under the Environmental Permitting (England and Wales) Regulations 2016(a) or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

**14.** If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to

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(a) S.I. 2016/1154.

such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

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

**16.—**(1) Not less than 28 days before starting the execution of any works that are near to, or will or may affect, any apparatus where the removal of which has not been required by the undertaker, the undertaker must submit to Anglian Water a plan, section and description of the works to be executed.

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

(3) Any reasonable requirements made by Anglian Water under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it and where no requirements are specified within 21 days, approval of the plan, specification and description is deemed to have been given.

(4) Nothing in this paragraph 16 shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

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

**17.** If for any reason as a result of the construction of any of the works referred to in paragraphs 13 or 16 any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

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

**18.** Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, penalties and costs to which the provisions of this Part 2 apply. If requested to do so by the undertaker, Anglian Water must provide an explanation of how any claim has been minimised. The undertaker is only liable under paragraph 17 for claims reasonably incurred by Anglian Water.

**19.** For the avoidance of doubt any difference under any provision of this Part 2 of Schedule 6, unless otherwise provided for, shall be referred to and settled by arbitration in accordance with the rules at Schedule 5 (Arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

## PART 3

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

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

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

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

“the code rights” has the same meaning as in the Paragraph 3 of the electronic communications code(b);

“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;

“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 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.

**22.** The exercise of the powers conferred by this Order is subject to part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

**23.—**(1) Subject to sub-paragraphs (2) to (3), if as a result of the authorised development or its construction, or of any subsidence resulting from any of the authorised development—

- (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 the authorised development), 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.

**24.** 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

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(a) 2003 c. 21.

(b) See section 106 of the 2003 Act. Section 106 was amended by section 4(3) of the Digital Economy Act 2017 (c. 30).

undertaker and if such consent, is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**25.** 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 17 (arbitration).

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

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

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

## PART 4

### FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC

#### Application

**28.** For the protection of Northern Powergrid (Yorkshire) PLC (“Northern Powergrid”), the following provisions will have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

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

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than “A-” if the rating is assigned by Standard & Poor’s Ratings Group or “A3” if the rating is assigned by Moody’s Investors Services Inc. (or an equivalent credit rating from an equivalent organisation in the event that such organisation or ratings are no longer applicable);

“acceptable insurance” means a policy of public liability/ third party liability insurance effected and maintained by the undertaker or its contractor(s) to a level that may be approved by Northern Powergrid in writing and in any event with insurance cover of not less than £10,000,000 (ten million pounds) per event for the construction period of the onshore works pursuant to this Order with an internationally recognised insurer of repute operating in the London and worldwide insurance market, and such policy shall include (but without limitation)—

- (a) that Northern Powergrid is named as an insured party under the policy;
- (b) a cross liabilities clause; and
- (c) a waiver of subrogation in favour of Northern Powergrid;

“acceptable security” means either—

- (a) evidence provided to Northern Powergrid’s reasonable satisfaction that the undertaker has a tangible net worth of not less than £100,000,000 (one hundred million pounds) (or an equivalent financial measure); or
- (b) a parent company guarantee from the undertaker’s ultimate parent company such company having a tangible net worth of not less than £100,000,000 (one hundred million pounds) (or an equivalent financial measure) in favour of Northern Powergrid to cover the undertaker’s liability to Northern Powergrid to a cap of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty-five million pounds) in a form satisfactory to Northern Powergrid in its reasonable opinion; or

- (c) a bank bond or letter of credit from an acceptable credit provider in favour of Northern Powergrid to cover the undertaker's liability to Northern Powergrid for an amount of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty-five million pounds) in a form satisfactory to Northern Powergrid in its reasonable opinion;

“alternative apparatus” means alternative apparatus adequate to enable the Northern Powergrid in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electric plant (as defined in the 1989 Act), belonging to or maintained by Northern Powergrid;

“functions” includes powers and duties;

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

“Northern Powergrid” means Northern Powergrid (Yorkshire) PLC being a licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act for the area of the authorised development and in relation to any apparatus belonging to it or maintained by it.

### **No interference**

**30.** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not interfere with any communications cables or equipment used by Northern Powergrid in relation to its apparatus or interfere with any rights or interests supporting the use, maintenance or renewal of such equipment otherwise than by agreement of Northern Powergrid ( such agreement not to be unreasonably withheld or delayed).

### **Removal of apparatus**

**31.**—(1) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give Northern Powergrid 56 days advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (2) , afford to Northern Powergrid 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.

(2) 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 (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(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—

- (a) the undertaker shall in the first instance use reasonable endeavours to acquire all necessary land interests or rights as Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus and shall procure all necessary rights to access and maintain Northern Powergrid's apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by Northern Powergrid (acting reasonably); and

- (b) in the event the undertaker is not able to procure the necessary land interests or rights referred to in sub-paragraph 3(a) Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end unless it elects to do so.

(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 Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 17 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 17 (arbitration) and after the grant to Northern Powergrid of any such facilities and rights as are referred to in subparagraph (1) or (2), 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 56 days advance notice in writing to Northern Powergrid that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by Northern Powergrid, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northern Powergrid subject to the undertaker providing Northern Powergrid with plans and details including a material statement describing—

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

(7) The undertaker shall not commence the construction or renewal of any works to which sub-paragraph (6) applies until—

- (a) Northern Powergrid has given written approval of the plans so submitted;
- (b) Northern Powergrid has confirmed in writing that it is satisfied in its reasonable opinion that the undertaker has provided acceptable security for the construction period of the works authorised by the Order; and
- (c) Northern Powergrid has confirmed in writing that it is satisfied in its reasonable opinion that the undertaker has procured acceptable insurance and provided evidence that it shall maintain such acceptable insurance for the construction period of the works authorised by the Order;

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

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

**32.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the

undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 17 (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 Northern Powergrid 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 Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**33.**—(1) Not less than 56 days before starting the execution of any works of the type referred to in paragraph 31 (1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 31(1), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

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

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 30 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid 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 (2) to (6) apply as if the removal of the apparatus had been required by the undertaker under paragraph 31(1).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

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

### **Expenses and costs**

**34.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within 30 days receipt of a valid invoice all charges costs and expenses reasonably incurred by Northern Powergrid 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 authorised by this Order including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus in the event that Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 31(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 17 (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 Northern Powergrid by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

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

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

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

(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 Northern Powergrid, its officers, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Enactments and agreements**

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

### **Co-operation**

**37.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 31 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 33, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

### **Access**

**38.** If in consequence of an agreement reached in accordance with paragraph 31 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall use all reasonable endeavours to provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

### **EXPLANATORY NOTE**

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

This Order authorises INRG Solar (Little Crow) Limited to construct a new solar power generating station on land in Scunthorpe to the east of the British Steel plant and to carry out all associated works.

The Order also makes provision for the maintenance operation and decommissioning of the authorised development.

A copy of the plans, the environmental statement and other documents mentioned in this Order and certified in accordance with article 14 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at North Lincolnshire Council, Church Square House, 30-40 High Street, Scunthorpe, North Lincolnshire, DN15 6NL.