



Planning Act 2008  
Infrastructure Planning  
(Applications: Prescribed  
Forms and Procedure)  
Regulations 2009

Regulation 5(2)(b)

# North Lincolnshire Green Energy Park

Volume 2

2.1 Draft Development Consent Order

PINS reference: EN010116

March 2023

Revision number: 5



**2022 No.**

**INFRASTRUCTURE PLANNING**

**The North Lincolnshire Green Energy Park Order 2022[\*]**

*Made* - - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force* \*\*\*

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) and Part 5 of the Planning Act 2008(b) (“the 2008 Act”) for an Order granting development consent.

The application was examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The Secretary of State, in accordance with section 104(2) of the 2008 Act, has had regard to the relevant national policy statements and those matters which the Secretary of State thinks are both important and relevant to his decision.

The Secretary of State, having considered the representations made and not withdrawn and the application with the documents that accompanied the application, has determined to make an Order giving effect to the proposals comprised in the application.

The Secretary of State’s determination was published on [xxx].

Accordingly, 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 North Lincolnshire Green Energy Park Order 202[x] and comes in to force on [x] 202[x].

#### **Interpretation**

2.—(1) In this Order—

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

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

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

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

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

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

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

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

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- (a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.
- (b) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).
- (c) S.I. 2010/103, amended by S.I. 2012/635.
- (d) 1961 c.33.
- (e) 1965 c.56.
- (f) 1980 c.66.
- (g) 1981 c.66.
- (h) 1984 c.27.
- (i) 1990 c.8.
- (j) 1991 c.22.

“the 2009 Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009**(b)**;

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

“AOD” means above ordnance datum;

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

“authorised development” means the development, associated development and other associated development described in Part 1 and Part 2 of Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act (meaning of “development”);

“the book of reference” means the book of reference submitted under regulation 5(2)(d) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

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

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

“cables” means cables for the transmission of electricity and ancillary cables (including fibre optic cables) for the purpose of control, monitoring, protection or general communications;

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

“CBMF” means the concrete block manufacturing facility;

“CCUS” means the carbon capture utilisation and storage facility;

“CLP” means the outline construction logistics plan submitted as Appendix D of Chapter 13 of the environmental statement and certified as such by the Secretary of State for the purposes of this Order;

“CoCP” means the code of construction practice submitted as Annex 7 of the environmental statement and certified as such by the Secretary of State for the purposes of this Order;

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

“design principles and codes” means the design principles and codes submitted under regulation 5(2)(q) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

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

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

“DHPWN” means the district heating and private wire network;

“the environmental statement” means the environmental statement submitted under regulation 5(2)(a) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“ERF” means the energy recovery facility;

“the flood risk assessment” means the flood risk assessment submitted as Annex 3 of the environmental statement and certified as such by the Secretary of State for the purposes of this Order;

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

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(a) 2008 c.29.

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.

“framework travel plan” means the framework travel plan submitted as Appendix C of Chapter 13 of the environmental statement and certified as such by the Secretary of State for the purposes of this Order;

“hedgerows plan” means the plan submitted under regulation 5(2)(o) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

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

“indicative drainage strategy” means the indicative drainage strategy submitted as Annex 5 of the environmental statement and certified as such by the Secretary of State for the purposes of this Order;

“the indicative landscape and biodiversity plans” means the indicative landscape and biodiversity plans submitted under regulation 5(2)(o) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“the indicative lighting strategy” means the indicative lighting strategy submitted as Annex 4 of the environmental statement and certified as such by the Secretary of State for the purposes of this Order;

“indicative railway plans” means the indicative railway plans submitted under regulation 5(2)(o) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“the land plans” means the land plans submitted under regulation 5(2)(i) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

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

“maintain” includes (i) inspect, repair, adjust, alter, refurbish for the whole of the authorised development and (ii) in relation to any part (but not the whole of the authorised development) remove, reconstruct or replace that part provided those works do not give rise to materially new or materially different environmental effects; and “maintenance” and “maintaining” are to be construed accordingly;

“OEMP” means the operational environmental management plan submitted as Annex 8 of the environmental statement and certified as such by the Secretary of State for the purposes of this Order;

“option A” means the land shown on Sheets 1 to 10 and Sheet 10A of the land plans;

“option B” means the land shown on Sheets 1 to 10 and Sheet 10B of the land plans;

“the Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily and described in the book of reference;

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

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

“outline LBMMP” means the outline landscape and biodiversity management and monitoring plan submitted under regulation 5(2)(q) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“preliminary works” means works consisting of site clearance and removal of minor structures, environmental surveys, investigations for the purpose of assessing ground conditions including gas monitoring, erection of any temporary means of enclosure, temporary display of notices or installation of a site compound;

“public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours

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(a) 1981 c.67.

Act 1964 (interpretation)(a), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation;

“railway level plans” means the railway levels plans submitted under regulation 5(2)(o) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“RHTF” means the bottom ash and flue gas residue handling and treatment facility;

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

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

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

“rights of way and access plans” means the rights of way and access plans submitted under regulation 5(2)(k) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

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

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

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act for which purposes “highway authority” has the meaning given in this article; “street works” means the works listed in article 11(1);

“TRO drawings” means the TRO drawings submitted under regulation 5(2)(o) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“undertaker” means The North Lincolnshire Green Energy Park Limited (Company No. 10949653), whose registered office is Office 71, The Colchester Centre, Hawkins Road, Colchester, CO2 8JX, or a person who has the benefit of this Order in accordance with articles 9 and 10;

“vertical parameters plans” means the vertical parameters plans submitted under regulation 5(2)(o) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“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;

“working day” means any day other than a Saturday, Sunday or English bank or public holiday; and “the works plans” means the works plans submitted under regulation 5(2)(j) of the 2009 Regulations and certified as the works plans by the Secretary of State for the purposes of this Order.

“works plans” means works plans A, works plans B and works plans C submitted under regulation 5(2)(j) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

(2) All distances, directions, measurements and lengths referred to in this Order are approximate, except the parameters referred to in article 5 and Schedule 1 Part 3.

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

(4) References in this Order to “numbered works” or “Work No” are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans.

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

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



## **Electronic Communications**

- 3.—(1) In this Order, subject to article 46 (service of notices)—
- (a) references to documents, maps, plans, drawings, certificates or to copies, include reference to them in electronic form; and
  - (b) references to a form of communication that satisfies the conditions in paragraph (3) and “written” and cognate expressions are to be constructed accordingly.
- (2) If an electronic communication is received outside the recipient’s business hours, it is to be taken to have been received on the next working day.
- (3) The conditions are that the communication is—
- (a) capable of being accessed by the recipient;
  - (b) legible in all material respects; and
  - (c) sufficiently permanent to be used for subsequent reference.
- (4) For the purposes of paragraph (3)(b), a communication is legible in all material respects if the information contained in it is available to the recipient to no lesser extent than it would be if transmitted by means of a document in printed form.
- (5) In this article “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation)(a).

## **PART 2**

### **PRINCIPAL POWERS**

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

- 4.—(1) Subject to the provisions of this Order, 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 plans and within the limits of deviation.

#### **Limits of deviation**

- 5.—(1) In carrying out the authorised development the undertaker may
- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extents of the limits of deviation show on those plans; and
  - (b) in relation to Work Nos. 1, 1A, 1B, 1C, 1D, 2, 6, 7, 8, 9, 12, 13, 14 and 15 deviate vertically to the extent upwards as shown on the vertical parameters plans and listed in the parameters table in Part 3 of Schedule 1;
  - (c) in relation to Work Nos. 1, 1A, 1B, 1C, 1D, 2, 6, 7, 8, 9, 12, 13, 14 and 15 deviate vertically to any extent downwards as may be found necessary to construct foundations or any underground structure;
  - (d) in relation to Work Nos. 3 and 4 deviate vertically from the AOD levels shown on the indicative railway plans by a maximum of 1 metre upwards or 1 metre downwards; and
  - (e) deviate vertically downwards by up to 3 metres in relation to Work Nos. 10 and 11.
- (2) The undertaker must construct Work No. 5 within the following vertical limits of deviation: between 2.1 metres AOD and 5.2 metres AOD.

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(a) 2000 (c. 7), S15 as amended by paragraph 158, schedule 17, of the Communications Act 2003 (c. 21).

### **Maintenance of authorised development**

6.—(1) The undertaker is authorised to, and may at any time, maintain the authorised development subject to any provision in this Order, including the requirements, or to an agreement made under this Order.

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

### **Operation of authorised development**

7.—(1) The undertaker is authorised to use and operate the authorised development.

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

### **Planning permission**

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

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

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

### **Benefit of the Order**

9. Subject to article 10 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

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

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

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

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3) and paragraph (8) include references to the transferee or the lessee.

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

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

- (a) the holder of a licence under section 6 of the Electricity Act 1989 (licences authorising supply, etc.);<sup>(a)</sup>
- (b) in relation to a transfer or lease of utility or other infrastructure connection works the relevant statutory undertaker or licence holder; or
- (c) in relation to a transfer or lease of any works within a highway a highway authority responsible for the relevant highway.

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

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

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

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

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

(9) In this article “relevant statutory undertaker” or “licence holder” means a body—

- (a) who falls within section 127(8) of the 2008 Act (statutory undertakers’ land), is a holder of a statutory licence or a licence granted under a statute or other regulatory framework; and
- (b) whose licensed duties include owning, operating or maintaining utilities and or infrastructure and their connections.

## PART 3 STREETS

### Street works

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) remove or use all earth and materials in or under the street;
- (d) place and keep apparatus in the street;
- (e) maintain, renew or alter apparatus in the street, change its position or remove it;
- (f) demolish, remove, replace and relocate any street furniture;
- (g) execute any works to provide or improve sight lines;
- (h) execute and maintain any works to provide hard and soft landscaping;
- (i) carry out re-lining and placement of road markings;

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

- (j) remove and install temporary and permanent signage; and
- (k) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (j).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3) the undertaker may carry out any of the works referred to in paragraph (1) in any street.

(3) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority but such consent must not be unreasonably withheld and if the street authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

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

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

(6) Where the person carrying out any works under paragraph (1) is not the street authority the provisions of sections 54 (advance notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any such works.

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

**12.**—(1) Subject to paragraph (3), the undertaker may for the purposes of constructing and maintaining the authorised development alter the layout of any street within the Order limits and the layout of any street at its junction with such a street, and, without limitation on the scope of this paragraph, the undertaker may-

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of such a kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain crossovers and passing places.

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

(3) The powers conferred by paragraph (1) may not be exercised without the consent of the street authority but such consent must not be unreasonably withheld and if the street authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

(4) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being constructed.

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

**13.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up permanently the streets specified in column (2) of Schedule 4 (streets to be permanently stopped up for which a substitute is to be provided) to the extent specified, by reference to the letters shown on the access and rights of way plans, in column (3) of that Schedule.

(2) No street specified in column (2) of Schedule 4 (streets to be permanently stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Schedule, has been completed to the reasonable satisfaction of the relevant street authority and is open for use; or
  - (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).
- (3) Where a street has been stopped up under this article—
- (a) all rights of way over or along the street so stopped up are extinguished; and
  - (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the street as is bounded on both sides by land owned by the undertaker.
- (4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation from the undertaker to be determined, in case of dispute, under Part 1 of the 1961 Act(a).
- (5) This article is subject to article 34 (apparatus and rights of statutory undertakers in stopped up streets).

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

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

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) The undertaker may not temporarily stop up, alter or divert any street without the consent of the highway authority, and the highway authority may attach reasonable conditions to any such consent.

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

### **Public rights of way – creation and temporary stopping up**

**15.**—(1) Subject to the provisions of this article, the undertaker may, for any reasonable time, in connection with the carrying out and maintaining of the authorised development—

- (a) temporarily stop up the public rights of way specified in columns (1) and (2) of Part 1 of Schedule 5 (public rights of way to be temporarily suspended) to the extent specified in column (3) of that Part of that Schedule;
- (b) provide substitute temporary public rights of way where specified in column (4) of Part 1 of Schedule 5 (public rights of way to be temporarily suspended) on an alignment to be agreed with the relevant highway authority prior to the temporary stopping up of the public right of way concerned; and
- (c) temporarily stop up any other public rights of way to the extent agreed with the relevant highway authority.

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(a) 1961 c. 33, Part 1 was amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

(2) Any temporary substitute right of way must be maintained by the undertaker with appropriate signage, and must remain in place until the relevant temporarily suspended public right of way for which it is a substitute is again open for use by the public.

(3) The undertaker must not exercise the powers in paragraph (1) unless it has given not less than 28 days' notice in writing of its intention so to do the relevant highway authority.

(4) The undertaker may in connection with carrying out of the authorised development provide the new public rights of way specified in column (2) of Part 2 of Schedule 5 (new public rights of way to be created) and open them for use on such day as approved by the relevant highway authority.

### **Accesses**

**16.—**(1) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the relevant highway authority or the relevant street authority as appropriate (such consent not to be unreasonably withheld), form and lay out such means of access (permanent or temporary) or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) The agreement of the relevant highway authority or the relevant street authority as appropriate is not required for the formulation, layout or improvement of a new or existing means of access described in Schedule 1 (authorised development) and carried out in accordance with the relevant provisions of Parts 1 and 2 of Schedule 14 (protective provisions).

(3) If a highway authority or street authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

(4) The private means of access as set out in column (2) of Part 1 of Schedule 6 (private means of access to be closed for which no substitute is to be provided) may be closed by the undertaker without a substitute being provided.

(5) The undertaker may provide the private means of access as set out in column (2) of Part 2 of Schedule 6 (new private means of access created).

### **Clearways, prohibitions and restrictions**

**17.—**(1) Subject to paragraphs (3) and (4), from the date on which the undertaker notifies the relevant highway authority, no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait on any part of a carriageway specified in column (2) of Schedule 7 (clearways) as indicated in column (3) of Schedule 7.

(2) Nothing in paragraph (1) applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of the carriageway or verge, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance, improvement, reconstruction or operation of the carriageway or verge;

(iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the carriageway or verge of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A to the Communications Act 2003(a); or

(iv) any building operation or demolition;

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(a) See paragraph 5 of Schedule 3A (the electronic communications code) to the Communications Act 2003 (c.21). Schedule 3A was inserted by Schedule 1 to the Digital Economy Act 2017 (c. 30).

- (b) in relation to a vehicle being used—
  - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
  - (ii) in the service of a local authority, Highways England, a safety camera partnership or the Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
  - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991<sup>(a)</sup>; or
  - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2011<sup>(b)</sup>; or
- (c) in relation to a vehicle waiting when the person in control of it is—
  - (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or
  - (iii) prevented from proceeding by circumstances outside the person’s control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in Schedule 7 for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1) to (3) have effect as if made by a traffic regulation order under the 1984 Act and their application may be varied or revoked by such an order under that Act or by any other enactment which provides for the variation or revocation of such orders.

### **Classification of highways**

**18.**—(1) From the date on which the undertaker and relevant highway authority agree that the new highways described in Schedule 8 (classification of highways) have been completed they are to become classified roads as set out in column (3) of Schedule 8 for the purpose of any enactment or instrument which refers to highways classified as roads as if such classification had been made under section 12(3) (general provisions as to principal and classified roads) of the 1980 Act.

(2) The application of paragraph (1) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

### **Speed limits**

**19.**—(1) From the date on which the roads specified in Schedule 9 (Speed Limits) are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of Schedule 9 along the lengths of road identified in the corresponding row of column (2).

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development, impose a temporary speed limit either at all times or at times, on days or during such periods, and on such highways as may be specified by the undertaker.

(3) The undertaker must not exercise the powers in paragraph (2) unless it has given not less than 4 weeks’ notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority.

(4) The speed limits imposed by this Order are deemed to have been imposed by an order under the 1984 Act and—

- (a) have the same effect; and

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(a) 1991 c.56.

(b) 2011 c.5.

(b) may be varied by the relevant traffic authority in the same manner, as any other speed limit imposed by an order under that Act.

(5) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(a) when used in accordance with regulation 3(5) of those Regulations.

### **Traffic regulation**

**20.**—(1) Subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) suspend or authorise the use as a parking place of any highway;
- (d) make provision as to the direction or priority of vehicular traffic on any highway; and
- (e) permit or prohibit vehicular access to any highway;

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

(2) The undertaker is not to exercise the powers in paragraph (3) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority; and
- (b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 7 days of the relevant traffic authority's receipt of notice of the undertaker's intention under sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under paragraph (3) is to—

- (a) have effect as if duly made by, as the case may be—
  - (i) the relevant traffic authority as a traffic regulation order under the 1984 Act; or
  - (ii) the local highway authority as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act; and
- (b) be deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(b).

(4) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (3) at any time.

(5) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(6) If the relevant traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (3) that is accompanied by all relevant information the relevant traffic authority is deemed to have given consent.

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(a) S.I. 2011/935.

(b) 2004 c. 18, Section 2 was brought into force by Article 2 of S.I. 2004/2380 and Article 2 of S.I. 2009/1095 (W.55).



### **Agreements with street authorities**

- 21.—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
  - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) the maintenance of landscaping within a highway constructed as part of the highway works;
  - (d) the maintenance of highway related assets which fall outside of the extent of highway maintained by a relevant highway authority;
  - (e) any stopping up, alteration or diversion of a street as part of or to facilitate the authorised development;
  - (f) the carrying out in the highway of any of the works referred to in article 11(1) (street works); or
  - (g) the adoption by a street authority which is the highway authority of works—
    - (i) undertaken on a street which is existing publicly maintainable highway; and
    - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway.
- (2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) specify a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## **PART 4**

### **COMPULSORY ACQUISITION**

#### **Funding**

- 22.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either:
- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
  - (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land.
- (2) The provisions are—
- (a) article 23 (compulsory acquisition of land);
  - (b) article 25 (compulsory acquisition of rights);
  - (c) article 26 (private rights);
  - (d) article 29 (acquisition of subsoil or airspace only);
  - (e) article 30 (rights under or over streets);
  - (f) article 31 (temporary use of land for carrying out the authorised development);
  - (g) article 32 (temporary use of land for maintaining the authorised development);
  - (h) article 33 (statutory undertakers).

(3) A guarantee or alternative form of security, provided under paragraph (1), is given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such form as to be capable of enforcement by such a person.

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

### **Compulsory acquisition of land**

**23.—**(1) Subject to paragraph (2), the undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental, to it.

(2) The undertaker may only acquire compulsorily the land required for either option A or option B.

(3) This article is subject to paragraph (2) of article 25 (compulsory acquisition of rights) and article 31 (temporary use of land for carrying out the authorised development).

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

**24.—**(1) After the end of the period of 7 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 (determination of questions of disputed compensation) of the 1965 Act; and
- (b) no declaration may be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 27 (application of the 1981 Act).

(2) The authority conferred by article 31 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

**25.—**(1) The undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this article, article 26 (private rights) and article 33 (statutory undertakers), in the case of the Order land specified in column (1) of Part 1 of Schedule 10 (land in which only new rights etc. may be acquired) in relation to option A, or column (1) of Part 2 of Schedule 10 (land in which only new rights etc. may be acquired) in relation to option B, the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Part of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act, as substituted by paragraph (5) of Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right over land or restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 11 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights under paragraphs (1) and (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

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

### **Private rights**

**26.**—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 23 (compulsory acquisition of land) are suspended and unenforceable or, where so notified by the undertaker to the person with the benefit of such private rights or restrictive covenants, extinguished in so far as in either case their continuance would be inconsistent with the acquisition—

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 25 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

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

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

- (a) any notice given by the undertaker before—
    - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
    - (ii) the undertaker's appropriation of the land,
    - (iii) the undertaker's entry onto the land, or
    - (iv) the undertaker's taking temporary possession of the land
- that any or all of those paragraphs do not apply to any right specified in the notice; or

- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (7) If an agreement referred to in paragraph (6)(b)—
  - (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person;
  - (c) the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.
- (8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

### **Application of the 1981 Act**

- 27.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as so applied, has effect with the following modifications.
  - (3) Section 5 (earliest date for execution of declaration) is omitted.
  - (4) Section 5A (time limit for general vesting declaration) is omitted(a).
  - (5) In section 5B (extension of time limit during challenge)(b)—
    - (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
    - (b) for “the three year period mentioned in section 4” substitute “the seven year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the North Lincolnshire Green Energy Park Order 202[X]”.
  - (6) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.
  - (7) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(c), omit paragraph 1(2).
  - (8) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 of the 2008 Act (as modified by article 28 (application of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order.

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

- 28.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.
- (2) In section 4A(1) (extension of time limit during challenge)(d)—
    - (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
    - (b) for “the three year period specified in section 4” substitute “the seven year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the North Lincolnshire Green Energy Park Order 202[X]”.
  - (3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article

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(a) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c.22)  
 (b) Inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).  
 (c) Inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).  
 (d) Inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

24 (time limit for exercise of authority to acquire land compulsorily) of the North Lincolnshire Green Energy Park Order 202[X]”.

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

(a) omit paragraphs 1(2) and 14(2); and

(b) at the end insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 31 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of the North Lincolnshire Green Energy Park Order 202[X].”

#### **Acquisition of subsoil or airspace only**

**29.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph 21(1) of article 23 (compulsory acquisition of land) or article 25 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act, as modified by article 28 (application of Part 1 of the 1965 Act);

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) Section 153(4A) (blighted land: proposed acquisition of part interest, material detriment test) of the 1990 Act.

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

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

**30.**—(1) The undertaker may enter on and appropriate so much of the subsoil of or air-space over any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

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

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

(a) any subway or underground building; or

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

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

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

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

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

**31.—**(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Part 1 of Schedule 12 (land of which temporary possession may be taken) in relation to option A, or the land specified in columns (1) and (2) of Part 2 of Schedule 12 (land of which temporary possession may be taken) in relation to option B, for the purpose specified in relation to that land in column (3) of that Part of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), running tracks, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised development; and
- (e) construct any works, or use the land, as specified in relation to that land in column 3 Part 1 of Schedule 12 (land of which temporary possession may be taken) in relation to option A, or column 3 Part 2 of Schedule 12 in relation to option B, or any mitigation works.

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

(3) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) Part 1 of Schedule 12 (land of which temporary possession may be taken) in relation to option A, or that land in column (4) Part 2 of Schedule 12 in relation to option B, unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article; or
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Part 1 of Schedule 3 (streets subject to street works) in relation to option A, or Part 2 of Schedule 3 (streets subject to street works) in relation to option B.

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

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

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 25 (compulsory acquisition of rights) to the extent that such land is listed in column (1) Part 1 of Schedule 10 (land in which new rights etc., may be acquired) in relation to option A, or column (1) Part 2 of Schedule 10 (land in which new rights etc., may be acquired) in relation to option B; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 29 (acquisition of subsoil or airspace only).

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

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

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

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

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

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

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

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

(4) The undertaker is not required to comply with paragraph (3) in a case of emergency and if an emergency exists they must—

- (a) give to the owners and occupiers of the land in question notice of its intended entry or (as the case may be) of its having entered onto the land as soon as is reasonably practicable; and
- (b) comply with paragraph (1) so far as is reasonably possible in the circumstances.

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

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

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

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

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

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

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

(12) In this article "the maintenance period" means the period of 5 years beginning with the date on which the authorised development first exports electricity to the national electricity transmission network.

### **Statutory undertakers**

**33.** Subject to the provisions of Schedule 14 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference; and
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

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

**34.—**(1) Where a street is stopped up under article 13 (permanent stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 (permanent stopping up of streets) any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).
- (c) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—the execution of the relocation works required in consequence of the stopping up of the street; and
- (d) the doing of any other work or thing rendered necessary by the execution of the relocation works.

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



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

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

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

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

(5) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

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

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

(7) In this article—

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

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

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

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

**35.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 33, any person who is—

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

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(a) 2003 c. 21, as implemented by Article 1, Section 2 and Schedule 1 of S.I. 2003/1900, Article 3 of S.I. 2003/3142; as amended by Schedule 1 of S.I. 2011/1210.

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

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this paragraph—

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

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

## PART 5

### SUPPLEMENTAL POWERS

#### Discharge of water

**36.**—(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 construction, operation or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs; and

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

(5) Except as authorised under this Order, the undertaker must not, in constructing or maintaining works, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain 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 the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence under the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article expressions excluding “public sewer or drain” and “watercourse”, used both in this article and in the Water Resources Act 1991(c), have the same meaning as in that Act.

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

(b) S.I. 2016/1154.

(c) 1991 c.57

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

**37.**—(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 or boreholes 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 and boreholes.

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

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

- (a) must, if so required, 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 or boreholes are to be made under this article—

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

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

## **PART 6 OPERATIONS**

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

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

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

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

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

(4) Save in an emergency, the undertaker must not enter any land under paragraph (1) without serving a notice of the intended entry on the owners and occupiers of that land and, where the land is a highway maintainable at the public expense, on the highway authority.

(5) The notice under paragraph (5) must be served no less than 14 days before entering the land.

(6) In carrying out any activity authorised by paragraph (1) the duty contained in section 206(1) of the 1990 Act (replacement of trees) does not apply.

### **Removal of hedgerows**

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

- (a) remove any hedgerows within the Order limits and specified in Schedule 13 Part 1 (removal of hedgerows);
- (b) remove any important hedgerows within the Order limits and specified in Schedule 13 Part 2 (removal of important hedgerows); and
- (c) without limitation on the scope of sub-paragraph (a), and with the consent of the local authority in whose area the hedgerow is located, remove or translocate any hedgerow within the Order limits.

(2) The grant of consent of a local authority in terms of paragraph (1)(c) must not be unreasonably withheld.

(3) If a local authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (1)(c) the local authority is deemed to have granted consent.

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

## **PART 7**

### **MISCELLANEOUS AND GENERAL**

#### **Removal of human remains**

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

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

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the land for a minimum of 28 days.

(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 the relevant planning authority.

(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 in the land specified in the notice 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

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(a) S.I. 1997/1160.

(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 is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under powers conferred by 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 in the specified land; 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 must be reinterred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(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 powers conferred by 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 relevant planning authority.

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

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

(13) Section 25 (offence of removal of body from burial ground)(a) of the Burial Act 1857 does not apply to a removal carried out in accordance with this article.

(14) Section 3 (burial not to take place after Order in Council for discontinuance)(b) of the Burial Act 1853 does not apply to a removal carried out in accordance with this article.

(15) In this article, “the specified land” means any land within the Order limits.

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(a) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1) and amended by section 96(1) of, and paragraph 1 of Schedule 3 to, the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (No. 3).

(b) 1853 c. 134.

## Protective provisions

41. Schedule 14 (protective provisions) has effect.

## Application of landlord and tenant law

42.—(1) This article applies to—

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

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

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

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

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

## Operational land for purposes of the 1990 Act

43. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land) in relation to the land in respect of which Work Nos. 1, 1A, 1B, 1D, 2, 10, 11 and 14 are authorised.

## Defence to proceedings in respect of statutory nuisance

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

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

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(a) 1990 c.43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

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

- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990), 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.

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

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

- (a) the environmental statement;
- (b) the land plans;
- (c) the works plans;
- (d) the vertical parameters plans;
- (e) the indicative railway plans;
- (f) the rights of way and access plans;
- (g) the TRO drawings;
- (h) the hedgerows plan;
- (i) the design principles and codes;
- (j) the CoCP;
- (k) the OEMP;
- (l) the CLP;
- (m) the framework travel plan;
- (n) the indicative landscape and biodiversity plans;
- (o) the outline LBMMP;
- (p) the flood risk assessment;
- (q) the indicative lighting strategy; and
- (r) the indicative drainage strategy.

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**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority, an internal drainage board or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval must be given in writing and must not be unreasonably withheld or delayed.

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

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(a) 1978 c30.



notified the undertaker of its decision (and if it is a disapproval the grounds of disapproval), it is deemed to have approved the application or request.

### **Arbitration**

**48.**—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

(2) This article does not apply where any difference under any provision of this Order is between any person and the Secretary of State.

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

Address

Date

*Name*

*Title*

Department for Business, Energy and Industrial Strategy

## SCHEDULES

### SCHEDULE 1

Article 4

### AUTHORISED DEVELOPMENT

#### **In the Borough of North Lincolnshire**

A nationally significant infrastructure project as defined in sections 14(1)(a) (nationally significant infrastructure projects: general) and 15 (generating stations) of the 2008 Act and associated development within the meaning of section 115(2) (development for which development consent may be granted), comprising the following development and works—

#### PART 1

#### NUMBERED WORKS

#### **Energy park: ERF infrastructure**

**Work No. 1** — an electricity generating station located on land at Flixborough Wharf, Lincolnshire, fuelled by refuse derived fuels, with a capacity to process up to 760,000 tonnes of refuse derived fuel per annum, with a gross generation capacity of up to 95 megawatts at ISO conditions comprising the following works—

- (a) fuel reception and storage facilities, consisting of vehicle ramps, a tipping hall, shredder, bunker hall and cranes;
- (b) a combustion system housed within a boiler hall, consisting of three combustion lines and associated boilers;
- (c) a steam turbine and generator housed within a turbine hall with a cooling system;
- (d) a bottom ash handling system, including an ash conveyor housed within a bottom ash hall connecting to Work No. 2;
- (e) a flue gas treatment system, including residue and reagent silos housed within a flue gas treatment hall;
- (f) a silo or tank for the storage of ammonia reagents;
- (g) district heating equipment;

- (h) a tank for the storage of fuel oil;
- (i) a compressed air system;
- (j) a process effluent storage tank;
- (k) a switchyard including a sub-station and battery storage;
- (l) a transformer compound containing the generator transformer;
- (m) utility connections within the works limits;
- (n) pipe racks, pipe runs and cabling;
- (o) fire water pump house and fire water tank;
- (p) internal vehicle access roads, crossings and pedestrian and cycle facilities and routes;
- (q) administration offices and control room, security gatehouse, barriers and enclosures;
- (r) elevated walkway connected to Work Nos. 1C, 2 and 6;
- (s) weighbridges;
- (t) car parking;
- (u) a demineralised water treatment plant and demineralised water storage tanks;
- (v) indoor storage tanks for boiler water treatment chemicals;
- (w) a back-up generator;
- (x) trade effluent treatment plant; and
- (y) two visual barriers.

**Work No. 1A** — three emissions stacks, consisting of ERF stack windshield, back up boilers stack windshield and back-up generator stack, and associated emissions monitoring system.

**Work No. 1B** — carbon capture utilisation and storage facility capable of capturing at least 54,387 tonnes of CO<sup>2</sup> per annum including carbon dioxide storage tanks.

**Work No. 1C** — associated development being a visitors centre containing offices, exhibition space and visitor accommodation with elevated walkway connected to Work Nos. 1, 2 and 6.

**Work No. 1D** – a cooling system consisting of air-cooled condensers or air blast chillers.

**Work No. 2** comprising associated development—

- (a) a bottom ash and flue gas residue handling and treatment facility;
- (b) a concrete block manufacturing facility; and
- (c) offices and elevated walkway connected to Work Nos 1, 1C and 6.

### **Rail infrastructure**

**Work No. 3** — associated development being reinstatement of the railway line between Flixborough Wharf and the Dragonby sidings including new sidings and two footbridges across the railway line and three user worked crossings.

**Work No. 4** — associated development being a railhead, sidings and associated equipment to allow loading and unloading.

### **Energy park: supporting infrastructure**

**Work No. 5** — associated development being a new access road linking the B1216 and Stather Road, stopping up of the section of Stather Road between Neap House and Bellwin Drive, improvements to footpaths and the junction between the B1216 and A1077 and section of elevated walkway that connects to Work Nos. 1, 1C, 2 and 6.

**Work No. 6** — associated development being a plastic recycling facility and associated infrastructure including gatehouses, weighbridges, electrical equipment, heat exchange equipment,

office and welfare facilities, pre-processed material storage and post processed material storage, and section of elevated walkway connected to Work Nos. 1, 1C and 2.

**Work No. 7** — associated development being a hydrogen electrolyser, associated infrastructure, equipment required to inject hydrogen into the gas grid.

**Work No. 8** — associated development being an electric and hydrogen vehicle refuelling station, with hydrogen production and equipment required to inject hydrogen into the gas grid and offices.

**Work No. 9** — associated development being a battery storage facility capable of peak discharge of 30MWe, with associated infrastructure including site roads, offices, control equipment, transformers and rectifiers.

#### **DHPWN**

**Work No. 10** — associated development being private wire networks linking Work No. 1 with Work No. 2, Work No. 6, Work No. 7, Work No. 8, Work No. 9 and to end users outside of the Order limits.

**Work No. 11** — associated development being a district heating network providing heating and cooling and pipes carrying hydrogen gas, linking Work No. 1 with Work No. 6, and to end users outside of the Order limits.

#### **Landscaping, mitigation and utility works**

**Work No. 12** — associated development being hard and soft landscaping and the construction of landscape features including a wetland area and ecological mitigation works.

**Work No. 12A** - associated development being habitat creation measures incorporating biodiversity enhancements.

**Work No. 13** — associated development comprising flood defences and sustainable drainage systems, including swales, attenuation ponds and below ground tanks and the diversion of ditches.

**Work No. 14** — associated development comprising new cables diversions of existing utilities which conflict with the construction of Work No. 1, Work No. 2, Work No. 5, Work No. 6, Work No. 10 and Work No. 11.

**Work No. 15A** — associated development being temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas, generators, concrete batching facilities, vehicle and cycle parking facilities, security fencing and gates, external lighting, roadways and haul routes, wheel wash facilities, and signage in connection with Work Nos 1-14.

**Work No. 15B** — associated development being construction access, temporary laydown areas to allow for storage of materials and working areas in connection with Work Nos. 1-14.

## **PART 2**

### **OTHER ASSOCIATED DEVELOPMENT**

In connection with and in addition to Work Nos. 1, 1A to 1D and 2 to 14, to the extent that they do not otherwise form part of any such work, other associated development within the Order limits, being associated development within the meaning of section 115(2) of the 2008 Act (Development for which development consent may be granted), including—

- (a) temporary lighting, including lighting columns;
- (b) security fencing, gates, boundary treatment and other means of enclosure;
- (c) closed circuit television cameras and columns and other security measures;

- (d) surface and foul water drainage systems, oil-water separators, including channelling, culverting, crossings and works to existing drainage ditches and systems;
- (e) electric, gas, water, telecommunication and other infrastructure connections and works, and works to alter such services and utilities connections;
- (f) hard and soft landscaping;
- (g) biodiversity mitigation and enhancement measures;
- (h) site establishment and preparation works, including site clearance (including vegetation removal); earthworks (including soil stripping and storage and site levelling) and excavations; temporary fencing; the creation of temporary construction access points; and the temporary alteration of the position of services and utilities apparatus and connections;
- (i) vehicle access roads, crossings, parking, and pedestrian and cycle facilities and routes;

and such other works as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works in this Schedule 1 which do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

### PART 3

Article 5

#### PARAMETERS TABLE

| <i>(1)</i><br><i>Component</i>                                | <i>(2)</i><br><i>Maximum dimensions</i><br><i>(m)</i> | <i>(2)</i><br><i>Maximum height above Finished Floor Level (FFL)</i><br><i>(m)</i> | <i>(2)</i><br><i>Maximum height AOD</i><br><i>(m)</i> |       |
|---|---|--|---|-------|
| ERF (Work No.1)   | Tipping hall  | 87.5 x 60  | 31  | 37.6  |
|   | Bunker hall   | 92 x 40  | 43  | 49.6  |
|   | Boiler hall   | 105 x 60   | 55  | 61.6  |
|   | Flue gas treatment hall                               | 41 x 60  | 45  | 51.6  |
|   | Turbine hall  | 80 x 37  | 25  | 31.6  |
|   | Bottom ash hall                                       | 37 x 37  | 25  | 31.6  |
|   | Transformer compound                                  | 52 x 22  | 10  | 16.6  |
|   | Switchyard  | 93 x 44  | 10  | 14.6  |
|   | Offices and admin facilities                          | 30 x 100   | 43  | 49.6  |
|   | Fire water tank                                       | 11.3 diameter  | 19.3  | 25.9  |
|   | Fire water pumphouse                                  | 6 x 6  | 6.5   | 13.1  |
|   | Gatehouses  | 32 x 12  | 5   | 11.6  |
|   | Visual barriers                                       |  | 4.5   | 11.1  |
| ERF stack windshield (Work No. 1A)                            | 10 diameter   |  | 120   | 126.6 |
| Back up boilers stack windshield (Work No. 1A)                | 3 diameter  |  | 53  | 59.6  |
| Back-up generator stack (Work No. 1A)                         | 0.85 diameter   |  | 55  | 61.6  |
| Carbon capture utilisation and storage facility (Work No. 1B) | 79 x 66   |  | 50  | 56.6  |

|  |   |           |       |      |
|--|---|-----------|-------|------|
| Carbon dioxide storage tanks (Work No. 1B)             | 28 x 20   | 20        | 26.6  |      |
| Visitor centre (Work No. 1C)                           | 41 x 36   | 16        | 19.05 |      |
| Elevated walkway (Work No. 1 and 1C)                   | 700 x 4   | 12        | 17.05 |      |
| Air-cooled condensers/Air blast chillers (Work No. 1D) | 75 x 35   | 50        | 56.6  |      |
| RHTF and CBMF (Work No.2)                              | process building and storage areas                | 280 x 130 | 25    | 30.1 |
|  | Admin buildings                                   | 62 x 10   | 21    | 26.1 |
| Access road (Work No. 5)                               |   |           |       | 5.2  |
| Plastic recycling facility (Work No. 6)                | Pre-processed material storage                    | 65 x 35   | 10    | 13.9 |
|  | Heat exchange building                            | 35 x 17   | 15    | 18.9 |
|  | Post processed storage                            | 5 x 16.4  | 15    | 18.9 |
|  | Electrical rooms                                  | 15 x 7    | 10    | 13.9 |
|  | Process building                                  | 130 x 80  | 25    | 28.9 |
|  | Admin building                                    | 62 x 10   | 21    | 24.9 |
| Hydrogen electrolyser (Work No. 7)                     | Northern Gas AGI                                  | 60 x 60   | 5     | 9.6  |
|  | Northern hydrogen production and storage facility | 100 x 25  | 8     | 12.6 |
| Vehicle refuelling station (Work No. 8)                |   | 95 x 80   | 12.5  | 15.5 |
| Hydrogen refuelling station (Work No. 8)               | Southern Gas AGI                                  | 60 x 60   | 5     | 10.1 |
|  | Southern hydrogen production and storage facility | 100 x 25  | 8     | 11.6 |
| Battery storage facility (Work No. 9)                  |   | 115 x 58  | 8.5   | 11.5 |

## SCHEDULE 2 REQUIREMENTS

Article 4

### PART 1 REQUIREMENTS

#### Interpretation

**1.** In this Schedule—

“coming into operation” or “come into operation” means the date on which the commissioning of the relevant part of the authorised development is completed so that that part becomes operational;

“commissioning” means the process of assuring that all systems and components of any phase of the authorised development as the context requires, are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker;

“energy park works” means Work Nos. 1, 1A, 1B, 1C, 1D, 2, 6, 7, 8, 9 and 12;

“PPDW CEMP” means a permitted preliminary development works construction environmental management plan as described in section 5.3 of the CoCP;

“operation” or “operational” means the operational running of the relevant part of the authorised development;

“railway reinstatement works” means Work Nos. 3 and 4.

### **Commencement and phasing of the authorised development and notices**

2.—(1) The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

(2) The authorised development must not be commenced until a written scheme setting out the proposed phasing of the authorised development has been submitted to and approved by the relevant planning authority and the approved phasing scheme must be complied with thereafter.

(3) The undertaker must notify the relevant planning authority within seven days of each of the following events occurring—

- (a) the start of commissioning of any part of the authorised development; and
- (b) the coming into operation of any part of the authorised development.

### **Detailed design**

3.—(1) In relation to any part of the authorised development no development of that part may commence, save for any preliminary works, until details of the following have been submitted to and approved by the relevant planning authority-

- (a) the siting, design, external appearance and dimensions of all buildings and structures comprising the authorised development which are to be retained;
- (b) the colours, materials and surface finishes of all new permanent buildings and structures referred to in sub-paragraph (a);
- (c) the permanent circulation roads, vehicle parking and hardstanding; and
- (d) grounds levels and heights of all permanent buildings and structures.

(2) The details submitted and approved under sub-paragraph (1) must be in accordance with the design process and codes set out in the design principles and codes, the noise limits relating to fixed plant in noise tables A and B of chapter 19: mitigation of the environmental statement and the flood risk assessment and must take into account any results of preliminary ground investigations, including ongoing archaeological investigations, topographical surveys and ground gas monitoring.

(3) The authorised development must be carried out in accordance with the details approved under sub-paragraph (1) for the relevant part of the authorised development.

### **Environmental management**

4.—(1) The preliminary works may not commence until a PPDW CEMP has been submitted to and approved by the relevant planning authority and the preliminary works must be carried out in accordance with the approved PPDW CEMP unless otherwise agreed in writing by the relevant planning authority.

(2) No part of the authorised development may commence, save for the preliminary works, until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority following consultation with the Environment Agency and

Natural England to the extent the construction environmental management plan relates to matters relevant to their functions.

(3) The construction environmental management plan submitted and approved must be in accordance with the CoCP and incorporate the following—

- (a) dust management plan;
- (b) remediation strategy
- (c) spill response plan;
- (d) asbestos management plan;
- (e) construction flood management plan;
- (f) construction waste management plan;
- (g) protected species management plan;
- (h) invasive non-native species management plan;
- (i) soil management plan;
- (j) community relations plan;
- (k) construction noise and vibration management plan;
- (l) construction ornithology management plan; and
- (m) piling and foundation works management plan.

(4) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan for the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

(5) No part of the energy park works or railway reinstatement works may come into operation until a detailed operational environmental management plan for that part has been submitted to and approved by the relevant planning authority to the extent that such a plan is necessary to supplement the environmental management system required under the environmental permit.

(6) The detailed operational environmental management plan submitted and approved must be in accordance with the OEMP.

(7) The detailed operational environmental management plan in respect of the energy park works must also be in accordance with any conditions in the environmental permit and incorporate the following (to the extent such matters are not covered in the environmental management system required under the environmental permit)-

- (a) noise management plan in accordance with the relevant noise limits relating to operational noise in noise table B of chapter 19: mitigation of the environmental statement;
- (b) waste management plan; and
- (c) surface water discharge strategy.

(8) The maintenance and operation of the authorised development must be carried out in accordance with the approved detailed operational environmental management plan for the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

### **Lighting scheme**

5.—(1) No part of the energy park works or railway reinstatement works may come into operation until a scheme for all permanent external lighting has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved under sub-paragraph (1) must be in accordance with the principles of the indicative lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions during the operation of the authorised development.

(3) The scheme must be implemented as approved prior to the coming into operation of the authorised development and maintained throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority.

### **Landscape design**

6.—(1) No part of the energy park works or railway reinstatement works may commence until a landscaping scheme has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved under sub-paragraph (1) must be in accordance with the indicative landscape and biodiversity plans, the plans in appendix I (biodiversity net gain report) of the ecology and nature conservation chapter of the environmental statement in order to deliver the biodiversity net gain, and design process and codes set out in the design principles and codes and must include details of all hard and soft landscaping works, including—

- (a) materials, and the number, species, sizes and planting positions of any planting;
- (b) measures to protect any existing shrub and tree planting that is to be retained;
- (c) hard surfacing materials;
- (d) an implementation plan; and
- (e) a future maintenance plan.

(3) The scheme must be implemented within a period of 12 months beginning with the coming into operation of the authorised development and maintained as approved during the operation of the authorised development, unless otherwise agreed with the relevant planning authority.

### **Landscape and ecology management**

7.—(1) No part of the energy park works or railway reinstatement works may come into operation until a landscape and biodiversity management and monitoring plan for that part has been submitted to and approved by the relevant planning authority.

(2) The landscape and biodiversity management and monitoring plan submitted and approved must be in accordance with the principles in the outline LBMMP and must include an implementation timetable, including monitoring and maintenance activities.

(3) The plan approved under sub-paragraph (1) must be implemented and delivered as approved and in accordance with the approved timetable.

### **Surface water drainage**

8.—(1) No part of the energy park works may commence, save for the preliminary works, until details of the permanent surface water drainage systems, including a future maintenance plan, have been submitted to and approved by the relevant planning authority following consultation by the undertaker with the lead local flood authority, Scunthorpe and Gainsborough Water Management Board and the Environment Agency on matters related to their function.

(2) The details submitted and approved under sub-paragraph (1) must be in accordance with the principles set out in the indicative drainage strategy and the design process and codes set out in the design principles and codes.

(3) The scheme approved under sub-paragraph (1) must be implemented as approved prior to the development coming into operation and maintained as approved throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

### **Foul water drainage**

9.—(1) No part of the energy park works may commence, save for the preliminary works, until details of the permanent foul water drainage systems, including a future maintenance plan, have been submitted to and approved by the relevant planning authority following consultation with the Environment Agency on matters related to their function.



(2) The details submitted and approved under sub-paragraph (1) must be in accordance with the principles set out in the indicative drainage strategy.

(3) The scheme approved under sub-paragraph (1) must be implemented as approved prior to the development coming into operation and maintained as approved throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority.

### **Construction traffic management and travel planning**

**10.**—(1) No part of the authorised development may commence, save for the preliminary works, until a construction traffic management plan and a construction workers travel plan for that part has been submitted to and approved by the relevant planning authority.

(2) The construction traffic management plan submitted and approved under sub-paragraph (1) must be in accordance with the CLP.

(3) The construction traffic management plan and construction workers travel plan must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

### **Archaeology**

**11.**—(1) No part of the authorised development is to commence until the undertaker has completed the following sequence of measures for that part of the authorised development—

- (a) commissioned a programme of exploratory archaeological investigation of areas within the Order limits that provides for the identification and evaluation of the extent, character and significance of archaeological remains in any areas of the Order limits where previous evaluation investigations have not taken place or are incomplete.
- (b) submitted to the relevant planning authority for approval a written scheme of investigation setting out the details of the programme of evaluation for the relevant planning authority to approve prior to commencement of the evaluation investigations.
- (c) completed the evaluation investigations and submitted final reports to the relevant planning authority in accordance with the details and timings of the approved written scheme of investigation, provided that the evaluation investigations must be timed so that the results can inform the scope of the archaeological mitigation measures, referred to in sub-paragraph (2).
- (d) submitted to the relevant planning authority for approval a survey and assessment update report of the significance of all identified and potential heritage assets and the impact of the authorised development on that significance; and
- (e) submitted to the relevant planning authority for approval an overarching archaeological mitigation strategy that details all mitigation measures to preserve, and if necessary enhance, all heritage assets affected by the authorised development.

(2) No part of the authorised development is to commence until a programme of archaeological mitigation measures for that part of the authorised development informed by the evaluation investigations referred to in sub-paragraph (1) and by earlier phases of investigation has been implemented in accordance with the approved overarching archaeological mitigation strategy and further written schemes of investigation for archaeological fieldwork which have been approved in writing by the relevant planning authority. The overarching archaeological mitigation strategy and written schemes of investigation must include and make provision for the following elements—

- (a) mitigation fieldwork including measures to ensure the preservation in situ or by record of archaeological features of identified importance;
- (b) post mitigation fieldwork methodologies for assessment and analysis;
- (c) reporting and dissemination of findings, including publication of significant results;
- (d) preparation of site archive, arrangements and timetable for deposition and sustainable management at a store approved in writing by the relevant planning authority;

- (e) a timetable including sufficient notification to ensure that the mitigation fieldwork is undertaken and completed in accordance with the mitigation strategy before commencement of the relevant part of the authorised development;
- (f) curatorial monitoring arrangements, including the notification in writing to the North Lincolnshire Historic Environment Record Office of the commencement of archaeological works and the opportunity to monitor such works;
- (g) a list of all staff involved in the implementation of the mitigation strategy, including sub-contractors and specialists, their responsibilities and qualifications;
- (h) any arrangements for community involvement; and
- (i) measures to enhance the interpretation and public appreciation of heritage assets.

(3) The approved mitigation measures must be carried out in accordance with the written scheme of mitigation measures.

### **Flood risk**

12.—(1) No part of the authorised development may commence, save for the preliminary works, until a detailed flood mitigation strategy, including the flood defences forming part of Work No. 13, an implementation timetable and long-term maintenance arrangements, has for that part, been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) No part of the energy park works may be commissioned until a flood management plan, which must include an evacuation route plan and flood resilience implementation plan, has, for that part, been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved under sub-paragraphs (1) and (2) must be in accordance with the principles in the flood risk assessment unless otherwise agreed by the relevant planning authority in consultation with the Environment Agency and the lead local flood authority.

(4) The schemes approved under sub-paragraphs (1) and (2) must be implemented as approved prior to the coming into operation of the energy park works and maintained throughout the operation of the energy park works unless otherwise agreed with the relevant planning authority.

### **Operational travel plan**

13.—(1) The energy park works must not come into operation until a travel plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved under sub-paragraph (1) must be in accordance with the framework travel plan unless otherwise agreed by the relevant planning authority.

(3) The plan approved under sub-paragraph (1) must be implemented as approved throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority.

### **New highway access**

14.—(1) The undertaker must not commence development of the energy park works or railway reinstatement works, excluding any preliminary works, until the new access road (Work No. 5) has been constructed to base course level and connected to the public highway.

(2) As part of constructing the new access road to base course level under sub-paragraph (1), the undertaker must carry out such parts of Work Nos. 10 and 11 as fall within the land in respect of which Work No. 5 is authorised.

### **Waste hierarchy scheme**

15.—(1) Prior to the commissioning of any part of the energy park works the undertaker must submit to the relevant planning authority for approval a scheme, which sets out arrangements for

maintenance of the waste hierarchy in priority order and which aims to minimise the quantities of recyclable and reusable waste contained within the residual waste received at the authorised development during the commissioning and operational period of the authorised development (the “waste hierarchy scheme”).

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

### **Decommissioning**

**16.—**(1) Within two years of the date that the undertaker decides to end commercial operation of the energy park works, the undertaker must submit to the relevant planning authority for its approval a decommissioning plan, including a timetable for its implementation and a decommissioning environmental management plan which shall include, but not be limited to, matters such as flood risk.

(2) The plan submitted to and approved under sub-paragraph (1) must be implemented as approved unless otherwise agreed with the relevant planning authority.

### **Combined heat and power**

**17.—**(1) No part of the energy park works may be commissioned until a scheme for the provision of steam or hot water pass-outs has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted under sub-paragraph (1) must as a minimum comply with the conditions relating to steam and hot water pass-outs within any environmental permit granted in respect of the authorised development.

(3) The scheme approved under sub-paragraph (1) must be implemented as approved prior to the coming into operation of the authorised development and maintained throughout the operation of the authorised development.

### **Commissioning**

**18.—**(1) Notice of the intended completion of commissioning of Work Nos. 1 (ERF), 1B (CCUS) and 2(b) (CBMF) must be given to the relevant planning authority where practicable prior to such completion.

(2) Work No. 1B (CCUS) must be constructed and commissioned within 6 months of the commissioning of Work No. 1 (ERF) and Work No. 2(b) (CBMF) must be constructed and

commissioned within 12 months of the commissioning of Work No. 1B except that these timescales may be amended where it has been demonstrated to the satisfaction of the relevant planning authority that the alternative timescales sought are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

### **Carbon Capture**

**19.**—(1) Once commissioned Work No. 1B (CCUS) must capture a minimum quantity of CO<sub>2</sub> which equates to the lesser of 54,387 tonnes per annum and 8.37% of the weight of the ERF waste throughput per annum from the date that the CCUS is commissioned until the energy park works are decommissioned.

(2) Within 28 days of the date which is one calendar year from the date Work No. 1B comes into operation, the undertaker must submit a report to the relevant planning authority confirming the amount of CO<sub>2</sub> captured during the previous year of operation and must continue to submit such reports annually until the energy park works are decommissioned.

### **Rail**

**20.**—(1) The undertaker must use reasonable endeavours to complete all necessary works forming part of Work No.3 to such an extent as to facilitate the use of the railway by rail freight importing or exporting waste or other materials within 12 months of construction of the new access road (Work No. 5) to base course level as per requirement 14 and in any event must complete Work No. 3 prior to commissioning of Work No. 1

(2) Following completion of Work No.3 the undertaker must retain, manage and keep the railway forming part of the authorised development available for use throughout the construction and operation of the authorised development.

### **Approved details and amendments to them**

**21.** Where a requirement requires the authorised development to be constructed in accordance with details approved by the relevant planning authority, the approved details are taken to include any amendments subsequently approved by the relevant planning authority

### **Amendments agreed by the relevant planning authority**

**22.**—(1) Where the words “unless otherwise agreed by the relevant planning authority” appear in the requirements—

- (a) whenever the undertaker requests that the relevant planning authority provides its agreement in accordance with those words, the undertaker must provide the relevant planning authority with information on compliance with any document listed in the relevant requirement and any other relevant certified document; and
- (b) any such approval or agreement may only be given in relation to non-material amendments and where it has been demonstrated to the satisfaction of that authority that the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) In cases where the requirement or the relevant sub-paragraph requires consultation with specified persons, any such approval or agreement must not be given without the relevant planning authority having first consulted with those persons.

### **Requirement for written approval**

**23.** Where under any of the requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

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

24.—(1) If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of this Schedule, those steps must be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

(2) Any document submitted to the relevant planning authority which the undertaker considers may constitute a step referred to at sub-paragraph (1) must include a statement that it is likely to engage sub-paragraph (1).

## **PART 2**

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

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

25.—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order:

- (a) The undertaker must give the discharging authority sufficient information to identify the requirement(s) to which the application relates;
- (b) The undertaker must provide such particulars, and the request be accompanied by such plans and drawings as are reasonably considered necessary to deal with the application.

(2) The discharging authority must give notice to the undertaker of the decision on the application before the end of the decision period

(3) For the purposes of sub-paragraph (2), the decision period is-

- (a) Where no information is requested under paragraph 27, 8 weeks from the day immediately following that on which the application is received by the discharging authority;
- (b) Where further information is requested under paragraph 27, 8 weeks from the day immediately following that on which further information has been supplied by the undertaker under paragraph 27 (further information); or
- (c) such longer period as may be agreed between the parties.

(4) In determining any application made under sub-paragraph (1), the discharging 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 discharging authority must provide its reasons for that decision with the notice of the decision pursuant to sub-paragraph (2).

#### **Fees**

26.—(1) Where an application is made to the discharging authority for consent, agreement or approval in respect of a requirement, a fee of £[X] is to be paid to that authority.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 42 days of—

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within the decision period as determined under paragraph 25, unless within that period the undertaker agrees, in writing, that the fee is to be retained by the discharging authority and credited in respect of a future application.

## Further information

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

(2) In the event that the discharging authority considers such further information to be necessary the discharging authority must, as soon as reasonably practicable and within 20 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) In the event that the discharging authority does not give such notification within that 20 business day period it is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 25 (applications made under requirements) and in this paragraph.

## Appeals

28.—(1) The undertaker may appeal to the Secretary of State in the event that-

- (a) the discharging authority refuses an application for any agreement or approval required by a requirement included in this Order;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period as determined in paragraph 25;
- (c) on receipt of a request for further information pursuant to paragraph 27 (further information) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not reasonably necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not reasonably necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State, a copy of the application submitted to the discharging authority and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”);
- (b) the undertaker must on the same day provide copies of the appeal documentation to the discharging authority and the requirement consultee (if applicable);
- (c) as soon as is practicable after receiving the appeal documentation, but in any event within 20 business days of receiving the appeal documentation, the Secretary of State must appoint a person and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the discharging authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under sub-paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person; and
- (e) the appeal parties must make any counter-submissions to the appointed person within 20 business days of receipt of written representations pursuant to sub-paragraph (d) above.

(3) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 20 business days of that date.

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

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

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.

(7) The appointed person may proceed to a decision even though no written representations have been made within those 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.

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

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Part 1 of Schedule 2 (requirements) as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) may not be taken to affect or invalidate the effect of the appointed person's determination.

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

(11) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance on the award of costs or any guidance which may from time to time replace it.

## **Interpretation**

### **29. In this Schedule**

“the appeal parties” means the discharging authority, the requirement consultee and the undertaker; “business day” means a day other than Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a);

“discharging authority” means that person or body responsible for approving details pursuant to the requirements in Schedule 2 Part 1.

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(a) 1971 c. 80 to which there are amendments not relevant to this Order.

## SCHEDULE 3

Article 11

### STREETS SUBJECT TO STREET WORKS

| <i>(1)</i><br><i>Area</i>   | <i>(2)</i><br><i>Streets subject to street works</i>  | <i>(3)</i><br><i>Description of street works</i>  |
|---|---|---|
| <b>The rights of way and access plans – Sheet 1</b>                   |   |   |
| In the Borough of North<br>Lincolnshire                               | Brumby Common Lane and<br>verge, Scunthorpe between<br>points SW1 and SW2   | Installation of the DHPWN<br>(Work Nos. 11 and 12).   |
| <b>The rights of way and access plans – Sheet 2</b>                   |   |   |
| In the Borough of North<br>Lincolnshire                               | West of M181 between points<br>SW3 and SW4  | Installation of the DHPWN<br>(Work Nos. 11 and 12).   |
| <b>The rights of way and access plans – Sheet 3</b>                   |   |   |
| In the Borough of North<br>Lincolnshire                               | A18 Doncaster Road between<br>points SW5 and SW6  | Installation of the DHPWN<br>(Work Nos. 11 and 12).   |
| <b>The rights of way and access plans – Sheet 4</b>                   |   |   |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | B1216 Ferry Road West<br>between points SW7 and SW8   | The creation of a new<br>roundabout at the junction<br>with the new spine road.<br>Installation of the DHPWN<br>(Work Nos. 11 and 12).  |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | B1216 Ferry Road West<br>between points SW8 and SW9   | Installation of the DHPWN<br>(Work Nos. 11 and 12).   |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | A1077 Phoenix Parkway<br>between points SW10 and<br>SW11 including the eastern<br>and western junctions with<br>Ferry Road West | The creation of a new<br>staggered toucan crossing,<br>extension of the existing exit<br>lane towards Ferry Road West<br>with the associated road<br>marking, re-shape of the<br>existing traffic islands,<br>realignment of the kerb line<br>located at the north of the<br>crossing and the creation of a<br>new shared footway that<br>connects to the junction with<br>Ferry Road West and Main<br>Avenue.<br>Installation of the DHPWN<br>(Work Nos. 11 and 12). |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | A1077 Phoenix Parkway<br>between points SW11 and<br>SW12  | Installation of the DHPWN<br>(Work Nos. 11 and 12).   |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | Holyrood Drive between<br>points SW13 and SW14  | Installation of the DHPWN<br>(Work Nos. 11 and 12).   |
| <b>The rights of way and access plans – Sheet 5</b>                   |   |   |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | First Avenue between points<br>SW16 and SW17  | Improvements including the<br>creation of a segregated cycle<br>track, the realignment of the<br>southern kerblines and new<br>road marking.<br>Installation of the DHPWN   |



|   |  |  |
|---|--|--|
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | Bellwin Drive between points<br>SW17 and SW18  | (Work Nos. 11 and 12) and<br>other utilities.<br>Installation of the DHPWN<br>(Work Nos. 11 and 12) and<br>other utilities.  |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | The junction of Bellwin Drive<br>and Stather Road between<br>points SW18 and SW19                | Improvements and widening<br>including the creation of a<br>segregated cycle track,<br>realignment of Stather Road<br>and Bellwin Drive with<br>associated road marking,<br>creation of a new junction<br>with a ghost island arranged to<br>the new spine road and new<br>junction to the proposed<br>employee parking area for the<br>ERF.<br>Installation of the DHPWN<br>(Work Nos. 11 and 12) and<br>other utilities. |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | North of Stather Road<br>between points SW19 and<br>SW20   | Installation of the DHPWN<br>(Work Nos. 11 and 12) and<br>other utilities.   |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | First Avenue between points<br>SW20 and SW17   | Installation of the DHPWN<br>(Work Nos. 11 and 12) and<br>other utilities.   |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | First Avenue between points<br>SW20 and SW21   | Installation of the DHPWN<br>(Work Nos. 11 and 12) and<br>other utilities.   |
| <b>The rights of way and access plans – Sheet 9</b>                   |  |  |
| In the Borough of North<br>Lincolnshire                               | A1077 Phoenix Parkway<br>between points SW15 (also on<br>Sheet 4) and SW22                       | Installation of the DHPWN<br>(Work Nos. 11 and 12).  |
| In the Borough of North<br>Lincolnshire                               | A1077 Phoenix Avenue and<br>Clayfield Road roundabout<br>between points SW22 and<br>SW23         | Installation of the DHPWN<br>(Work Nos. 11 and 12).  |
| <b>The rights of way and access plans – Sheet 10</b>                  |  |  |
| In the Borough of North<br>Lincolnshire                               | A1077 Phoenix Parkway<br>between points SW23 (Sheet<br>9) and SW24                               | Installation of the DHPWN<br>(Work Nos. 11 and 12).  |
| In the Borough of North<br>Lincolnshire                               | A1077 Phoenix Parkway and<br>Normanby Road roundabout<br>between points SW24 and<br>SW25         | Installation of the DHPWN<br>(Work Nos. 11 and 12).  |
| In the Borough of North<br>Lincolnshire                               | Normanby Road, Warren<br>Road, Bessemer Way and<br>Mannaberg Way between<br>points SW25 and SW26 | Installation of the DHPWN<br>(Work Nos. 11 and 12).  |

## SCHEDULE 4

Article 13

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

| <i>(1)</i><br>Area  | <i>(2)</i><br>Street to be stopped<br>up | <i>(3)</i><br>Extent of stopping up   | <i>(4)</i><br>New street to be<br>substituted  |
|---|--|---|--|
| <b>The rights of way and access plans – Sheets 4 and 5</b>      |  |   |  |
| In the Borough of North Lincolnshire Flixborough Parish Council | Reference A1 to A2 Part of Stather Road  | Reference A1 to A2 from point A1 located 40 metres north of Neap House to point A2 located at the junction between Stather Road and Bellwin Drive, a distance of 120 metres | Reference B1 to B2 To be substituted by a new highway from point B1 located on the B1216 Ferry Road West running in a northern direction to a point B2 located 146 metres east of Bellwin Drive, a distance of 1410 metres |

## SCHEDULE 5

Article 15

### PUBLIC RIGHTS OF WAY

#### PART 1

#### PUBLIC RIGHTS OF WAY TO BE TEMPORARILY SUSPENDED

| <i>(1)</i><br>Area  | <i>(2)</i><br>Footpath to be<br>temporarily<br>suspended or diverted                      | <i>(3)</i><br>Extent of temporary<br>suspension     | <i>(4)</i><br>Diversion to be<br>provided |
|---|---|---|---|
| <b>The rights of way and access plans – Sheet 6</b>             |   |   |   |
| In the Borough of North Lincolnshire Flixborough Parish Council | Public footpath FLIX175 from its junction with Stather Road to the railway crossing point | Between points E1 and E2, a distance of 116 metres  | No  |
| In the Borough of North Lincolnshire Flixborough Parish Council | Public footpath FLIX178 in the vicinity of the railway crossing point                     | Between points E3 and E4, a distance of 47.5 metres | No  |
| <b>The rights of way and access plans – Sheet 9</b>             |   |   |   |
| In the Borough of North Lincolnshire                            | Public footpath SCUN 175 at the crossing with the A1077 Phoenix Parkway                   | Between points E5 and E6, a distance of 21 metres   | Yes                                       |
| In the Borough of North Lincolnshire                            | Cycle track NCN 169 at the crossing with the A1077 Phoenix                                | Between points E5 and E6, a distance of 21 metres   | Yes                                       |

**PART 2**  
**NEW PUBLIC RIGHTS OF WAY TO BE CREATED**

| <i>(1)</i><br><i>Area</i>  | <i>(2)</i><br><i>Length of footpath/pedestrian-cycle path</i>  |
|--|--|
| <b>The rights of way and access plans – Sheet 4</b>                |  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | Reference CCF1 to CCF2<br>A cycle track in the verge on the northern side of the B1216 Ferry Road West from point CCF1 in a south eastern direction to point CCF2, a distance of 501 metres  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | Reference CCF3 to CCF5 (Sheet 5)<br>A cycle track in the verge on the northern side of Ferry Road West from point CCF3 (east of the A1077 Phoenix Parkway) in a north western direction to point CCF2 on the new spine road and then in a northern direction to Point CCF4 on Stather Road and then in a western direction to point CCF5 at the junction with Bellwin Drive, a distance of 2090 metres |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | Reference CCF6 to CCF7<br>A cycle track from point CCF6 on the new spine road in a western direction to point CCF7 on Stather Road, a distance of 330 metres   |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | Reference FP1 to FP2<br>A footpath from point FP1 on the new spine road in an eastern direction along Lysaght’s drain to point FP2, a distance of 921 metres   |
| <b>The rights of way and access plans – Sheet 5</b>                |  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | Reference CCF8 to CCF9<br>A cycle track in the verge on the south side of First Avenue from point CCF8 in a north eastern direction to point CCF9, a distance of 150 metres  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | Reference FP3 to FP4<br>A footpath from point FP3 on Stather Road in a north western direction to point FP4 on existing public right of way FLIX 304, a distance of 412 metres   |

**SCHEDULE 6**

Article 16

**PART 1**  
**PRIVATE MEANS OF ACCESS TO BE CLOSED FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED**

| <i>(1)</i> | <i>(2)</i> |
|------------|------------|
|------------|------------|

| <i>Area</i>  | <i>Private means of access</i>           |
|--|--|
| <b>The rights of way and access plans – Sheet 4</b>                |  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as C1  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as C2  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as C10 |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as C11 |
| <b>The rights of way and access plans – Sheet 5</b>                |  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as C3  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as C4  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as C5  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as C6  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as C7  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as C8  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as C9  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as C12 |

## PART 2

### NEW PRIVATE MEANS OF ACCESS CREATED

| <i>(1)</i><br><i>Area</i>  | <i>(2)</i><br><i>Private means of access</i> |
|--|--|
| <b>The rights of way and access plans - Sheet 4</b>                |  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as D1      |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as D2      |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as D3      |
| <b>The rights of way and access plans - Sheet 5</b>                |  |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as D4      |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as D5      |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as D6      |
| In the Borough of North Lincolnshire<br>Flixborough Parish Council | The private means of access shown as D7      |

## SCHEDULE 7

Article 17

### CLEARWAYS

| <i>(1)</i><br><i>Area</i>   | <i>(2)</i><br><i>Road name and length</i>  | <i>(3)</i><br><i>Measures</i>                    |
|---|--|--|
| <b>The TRO drawings – Sheet 4</b>                                     |  |  |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | Reference B and C<br>The B1216 Ferry Road West<br>including the new roundabout<br>between B and C.                 | Clearway (including verges<br>and hardshoulders) |
| <b>The TRO drawings – Sheets 4 and 5</b>                              |  |  |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | Reference A and D<br>A new road between B1216<br>Ferry Road West northwards<br>to Stather Road between A<br>and D. | Clearway (including verges<br>and hardshoulders) |
| <b>The TRO drawings – Sheet 5</b>                                     |  |  |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | Reference E and F<br>First Avenue between E and<br>F.  | Proposed waiting time<br>restriction             |

## SCHEDULE 8

Article 18

### CLASSIFICATION OF HIGHWAYS

| <i>(1)</i><br><i>Area</i>   | <i>(2)</i><br><i>Extent of highway</i>  | <i>(3)</i><br><i>Classification</i> |
|---|---|-------------------------------------|
| <b>The rights of way and access plans – Sheets 4 and 5</b>            |   |                                     |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | A new road from the B1216<br>Ferry Road West northwards<br>to Stather Road in the<br>approximate position between<br>B1 to B2 | Classified C Road                   |

## SCHEDULE 9

Article 19

### SPEED LIMITS

| <i>(1)</i><br><i>Area</i>   | <i>(2)</i><br><i>Extent of highway</i>  | <i>(3)</i><br><i>Speed limit</i> |
|---|---|----------------------------------|
| <b>The TRO drawings – Sheets 4 and 5</b>                              |   |                                  |
| In the Borough of North<br>Lincolnshire<br>Flixborough Parish Council | Reference A and D<br>A new road from the B1216<br>Ferry Road West northwards<br>to Stather Road between A<br>and D. | 50 miles per hour                |

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

PART 1

OPTION A – LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

| <i>(1)</i>  | <i>(2)</i>   |
|---|--|
| <i>Number of land shown on land plan</i>  | <i>Purpose for which rights may be acquired</i>  |
| <p>Access tracks<br/>                     Plots 1-1, 1-2, 1-3, 1-11, 1-12, 1-13, 1-14, 2-12, 2-13, 2-15, 2-16, 2-17, 2-18, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8, 3-17, 3-18, 3-22, 3-25, 4-33, 4-81, 6-2, 8-4, 8-5, 8-6, 8-7, 8-8</p> | <p>(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—</p> <ul style="list-style-type: none"> <li>(a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing authorised works;</li> <li>(b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining land and highway;</li> <li>(c) retain, maintain and use temporary supporting or protective structures and erect temporary supporting or protective structures (including the bridging over or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;</li> <li>(d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to and from adjoining land;</li> <li>(e) retain and maintain existing temporary permissive paths and lay out temporary permissive paths for public use (if applicable);</li> <li>(f) effect access and egress to and from the highway;</li> <li>(g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;</li> </ul> |

- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal works are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights); and
- (i) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised development.

Access tracks (public rights of way)  
Plots 5-66, 5-67

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing authorised works;
- (b) retain and maintain existing hardstandings for the purposes of access to adjoining land and highway;
- (c) retain, maintain and use temporary supporting or protective structures and erect temporary supporting or protective structures (including the bridging over or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to and from adjoining land;
- (e) effect access and egress to and from

the highway;

- (f) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (g) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal works are being carried out (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or reinstatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights); and
- (h) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised development.

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables and pipes by way of drilling and/or trenching;
- (b) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables, cable ducts and jointing works;
- (d) retain and maintain existing hardstandings and lay down, use,

#### Full cable rights

Plots 1-4, 1-5, 1-9, 1-10, 2-1, 2-2, 2-4, 2-9, 2-14, 3-3, 3-9, 3-11, 3-12, 3-13, 3-14, 3-19, 3-20, 3-21, 3-26, 4-1, 4-18, 4-21, 4-22, 4-23, 4-106, 5-26, 5-28, 5-31, 5-57, 5-58, 9-1, 9-4, 9-8, 9-11, 9-12, 9-14, 9-19, 9-20, 9-22, 9-23, 9-24, 9-25, 9-27, 9-28, 9-32, 9-35, 9-37, 10-35, 10-53, 10-56, 10-57, 10-60, 10-62



- repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables, cable ducts and jointing works;
- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables and steam along the pipes, or use of the cable ducts and jointing works;
  - (f) retain and use the pipes and cables for the purposes of the transmission of steam, communications, gas and electricity;
  - (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the pipes, cables, cable ducts and jointing works;
  - (h) install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;
  - (i) remove, store and stockpile materials (including excavated material) within the Order land;
  - (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the pipes and cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);
  - (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
  - (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;

- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the pipes, cables, cable ducts and jointing works;
- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of construction, maintenance, repair, replacement, renewal, upgrade and removal of the pipes, cables, cable ducts and jointing works;
- (q) when the pipes and cables are temporarily unusable, to lay down, install, use, maintain and inspect on the surface of the land steam pipes, electric lines, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised development.

(2) The right to enter and remain on the land for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development, and to—

- (a) enter upon the land and to create temporary secure areas;
- (b) place equipment on the land, including portakabins and welfare equipment;
- (c) store plant, materials and equipment;
- (d) create car parking sites, site offices, site areas for temporary security and welfare facilities;
- (e) effect access and egress to and from the highway;
- (f) create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised development; and

- (g) access the underground pipes, cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground steam pipes,, cables, cable ducts and jointing works, over the temporary secure area within the land, for purposes in connection with the installation and use of the underground steam pipes and cables.

(3) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the pipes, cables, cable ducts and jointing works;
- (b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining land and highway;
- (c) erect temporary supporting or protective structures (including the bridging over or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to and from adjoining land;
- (e) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (f) effect access and egress to and from the highway;
- (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading,

improvement, renewal or removal are being carried out and for the exercise of the power to access the pipes and cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the exercise of the rights); and

- (i) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 3 means such other parts of the land within the Order limits required for the authorised development.

(4) A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction or erection of works of any kind (including the foundations, footings or other supportive structures thereto);
- (b) prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised development nor make it materially more difficult or expensive to maintain the authorised development);
- (c) prevent mole draining or anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the undertaker save as are reasonably required for agricultural activities;
- (d) prevent the planting or growing within the Order land of any trees, shrubs or

underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised development nor make it materially more difficult or expensive to access the relevant part of the authorised development) provided that the growing within the land of any pre-existing trees, shrubs or underwood do not require the consent of the undertaker; and

- (e) prevent anything to be done in or upon the Order land or any part thereof which shall or which it is reasonably foreseeable may interfere with the exercise of the other rights set out in this Schedule or the use of the authorised development or in any way render the authorised development or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

#### Cable rights in highways

Plots 1-7, 1-8, 2-3, 4-2, 4-3, 4-6, 4-7, 4-13, 4-14, 4-16, 4-17, 4-19, 4-25, 4-27, 4-38, 4-39, 4-107, 4-108, 5-23, 5-24, 5-25, 5-27, 5-29, 5-30, 5-32, 5-33, 5-59, 5-60, 5-61, 5-62, 5-89, 9-5, 9-18, 9-26, 9-29, 9-31, 10-1, 10-2, 10-3, 10-4, 10-5, 10-6, 10-7, 10-10, 10-12, 10-13, 10-18, 10-37, 10-38, 10-50, 10-54, 10-61, 10-64, 10-73, 10-75, 10-76, 10-79, 10-80

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables and pipes by way of drilling and/or trenching;
- (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables and cable ducts;
- (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing,

laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables and cable ducts;

- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity and telecommunications along the pipes, cables and cable ducts;
- (f) retain and use the cables for the purposes of the transmission of steam, telecommunications and electricity;
- (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the pipes, cables and cable ducts;
- (h) install and maintain cable marker posts to identify the location of the pipes, cables and cable ducts as required for routine integrity testing;
- (i) remove store and stockpile materials (including excavated material) within the Order land;
- (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);
- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);

Major crossings (railway, highways)  
Plots 2-6, 2-7, 3-23, 3-24

- (n) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the pipes, cables and cable ducts;
  - (o) carry out environmental mitigation, remediation and enhancement works;
  - (p) install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, upgrade and removal of the pipes, cables and cable ducts;
  - (q) when the pipes or cables are temporarily unusable, to lay down, install, use, maintain and inspect on the surface of the land steam pipes, electric lines, telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
  - (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised development.
- (1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—
- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the pipes, pipe sleeves and cables by way of horizontal drilling or other trenchless techniques;
  - (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
  - (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of transmitting steam along the pipes and electricity along the cables and cable ducts;
  - (d) retain and use the pipes and cables for the purposes of the transmission of

steam and electricity; and

- (e) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers).

#### Highway works

Plots 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 4-13, 4-21, 4-22, 4-23, 4-25, 4-27, 4-98, 4-105, 4-106, 4-107, 4-108, 5-23, 5-24, 5-25, 5-26, 5-27, 5-28, 5-29, 5-30, 5-36, 5-37, 5-55, 5-62

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove road works and associated infrastructure and street furniture;
- (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of road works;
- (d) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus of statutory undertakers.

#### Utility works

Plots 4-2, 4-3, 4-6, 4-7, 4-13, 4-14, 4-16, 4-17, 4-18, 4-19, 4-21, 4-22, 4-23, 4-25, 4-26, 4-27, 4-38, 4-39, 4-106, 4-107, 4-180, 5-23, 5-24, 5-25, 5-26, 5-27, 5-28, 5-29, 5-30, 5-31, 5-32, 5-33, 5-36, 5-37, 5-55, 5-56, 5-57, 5-58, 5-59, 5-60, 5-61, 5-62, 5-64, 5-65, 5-68, 5-69, 5-82

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) divert install, underground, retain, use, monitor and maintain pipes, cables, conduits or apparatus of statutory undertakers;
- (b) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the pipes, cables, conduits or apparatus;
- (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of utility works.

“adjoining land” for the purposes of this



Drainage rights

Plots 4-34, 4-41, 4-42, 4-43, 4-44, 4-76, 4-81, 4-82, 4-87, 4-88, 4-95, 5-7, 5-8, 5-19, 5-90, 6-1, 6-2, 6-3, 6-5, 6-11, 6-12, 6-13, 6-83

paragraph 1 means such other parts of the land within the Order limits required for the authorised development.

(2) A restrictive covenant over the land to protect the apparatus from excavation.

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

(a) construct, retain, maintain, install, use, inspect, modify, improve, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;

(2) The right to drain on, in and/or through the land to and from adjoining land.

“adjoining land” for the purposes of this paragraph 2 means such other parts of the land within the Order limits required for the authorised development.

(3) A restrictive covenant over the land for the benefit of the remainder of the Order land to prevent anything to be done in or upon the land or any part thereof which shall or which it is reasonably foreseeable may interfere with the right to drain.

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

(a) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of landscaping works.

(2) A restrictive covenant over the land for the benefit of the remainder of the Order land to—

(a) prevent anything to be done in or upon the land or any part thereof which shall or which it is reasonably foreseeable may interfere with access to the landscaping works;

(b) prevent anything to be done in or upon the land or any part thereof which shall or which it is reasonably foreseeable may render the authorised development or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

Landscaping access

Plots 5-76, 5-89, 6-34

Railway works  
Plots 8-1, 8-2, 8-3, 8-5, 8-9

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove railway works and associated infrastructure;
- (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of railway works.

## PART 2

### OPTION B - LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

| <i>(1)</i>   | <i>(2)</i>  |
|--|---|
| <i>Number of land shown on land plan</i>   | <i>Purpose for which rights may be acquired</i>   |
| <p>Access tracks<br/>Plots 1-1, 1-2, 1-3, 1-11, 1-12, 1-13, 1-14, 2-12, 2-13, 2-15, 2-16, 2-17, 2-18, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8, 3-17, 3-18, 3-22, 3-25, 4-33, 4-81, 6-2, 8-4, 8-5, 8-6, 8-7, 8-8</p> | <p>(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—</p> <ul style="list-style-type: none"> <li>(a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing authorised works;</li> <li>(b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining land and highway;</li> <li>(c) retain, maintain and use temporary supporting or protective structures and erect temporary supporting or protective structures (including the bridging over or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining</li> </ul> |

land and highway;

- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to and from adjoining land;
- (e) retain and maintain existing temporary permissive paths and lay out temporary permissive paths for public use (if applicable);
- (f) effect access and egress to and from the highway;
- (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal works are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights); and
- (i) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised development.

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing authorised works;
- (b) retain and maintain existing

Access tracks (public rights of way)  
Plots 5-66, 5-67

- hardstandings for the purposes of access to adjoining land and highway;
- (c) retain, maintain and use temporary supporting or protective structures and erect temporary supporting or protective structures (including the bridging over or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to and from adjoining land;
- (e) effect access and egress to and from the highway;
- (f) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (g) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal works are being carried out (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or reinstatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights); and
- (h) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised development.

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables and pipes by way of drilling and/or trenching;
- (b) construct, install, use, retain, maintain,

#### Full cable rights

Plots 1-4, 1-5, 1-9, 1-10, 2-1, 2-2, 2-4, 2-9, 2-14, 3-3, 3-9, 3-11, 3-12, 3-13, 3-14, 3-19, 3-20, 3-21, 3-26, 4-1, 4-18, 4-21, 4-22, 4-23, 4-106, 5-26, 5-28, 5-31, 5-57, 5-58, 9-1, 9-4, 9-8, 9-11, 9-12, 9-14, 9-19, 9-20, 9-22, 9-23, 9-24, 9-25, 9-27, 9-28, 9-32, 9-35, 9-37, 10-11, 10-19, 10-20, 10-21, 10-22, 10-29, 10-35, 10-53, 10-56, 10-57, 10-60, 10-62

- inspect, modify, improve, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables, cable ducts and jointing works;
  - (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables, cable ducts and jointing works;
  - (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables and steam along the pipes, or use of the cable ducts and jointing works;
  - (f) retain and use the pipes and cables for the purposes of the transmission of steam, communications, gas and electricity;
  - (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the pipes, cables, cable ducts and jointing works;
  - (h) install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;
  - (i) remove, store and stockpile materials (including excavated material) within the Order land;
  - (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise

of the power to access the pipes and cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);

- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the pipes, cables, cable ducts and jointing works;
- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of construction, maintenance, repair, replacement, renewal, upgrade and removal of the pipes, cables, cable ducts and jointing works;
- (q) when the pipes and cables are temporarily unusable, to lay down, install, use, maintain and inspect on the surface of the land steam pipes, electric lines, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised development.

(2) The right to enter and remain on the land for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development, and to—

- (a) enter upon the land and to create temporary secure areas;
  - (b) place equipment on the land, including portakabins and welfare equipment;
  - (c) store plant, materials and equipment;
  - (d) create car parking sites, site offices, site areas for temporary security and welfare facilities;
  - (e) effect access and egress to and from the highway;
  - (f) create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised development; and
  - (g) access the underground pipes, cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground steam pipes, cables, cable ducts and jointing works, over the temporary secure area within the land, for purposes in connection with the installation and use of the underground steam pipes and cables.
- (3) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—
- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the pipes, cables, cable ducts and jointing works;
  - (b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining land and highway;
  - (c) erect temporary supporting or protective structures (including the bridging over or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
  - (d) alter, lop, uproot and replant trees, shrubs and hedges and other

vegetation for the purposes of enabling the right to pass and repass to and from adjoining land;

- (e) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (f) effect access and egress to and from the highway;
- (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the pipes and cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the exercise of the rights); and
- (i) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 3 means such other parts of the land within the Order limits required for the authorised development.

(4) A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction or erection of works of any kind (including the foundations, footings or other supportive structures thereto);
- (b) prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if



the proposed surfacing would not cause damage to relevant part of the authorised development nor make it materially more difficult or expensive to maintain the authorised development);

- (c) prevent mole draining or anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the undertaker save as are reasonably required for agricultural activities;
- (d) prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised development nor make it materially more difficult or expensive to access the relevant part of the authorised development) provided that the growing within the land of any pre-existing trees, shrubs or underwood do not require the consent of the undertaker; and
- (e) prevent anything to be done in or upon the Order land or any part thereof which shall or which it is reasonably foreseeable may interfere with the exercise of the other rights set out in this Schedule or the use of the authorised development or in any way render the authorised development or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

#### Cable rights in highways

Plots 1-7, 1-8, 2-3, 4-2, 4-3, 4-6, 4-7, 4-13, 4-14, 4-16, 4-17, 4-19, 4-25, 4-27, 4-38, 4-39, 4-107, 4-108, 5-23, 5-24, 5-25, 5-27, 5-29, 5-30, 5-32, 5-33, 5-59, 5-60, 5-61, 5-62, 5-89, 9-5, 9-18, 9-26, 9-29, 9-31, 10-7, 10-12, 10-13, 10-18, 10-23, 10-24, 10-25, 10-26, 10-27, 10-28, 10-30, 10-31, 10-32, 10-34, 10-37, 10-38, 10-50, 10-54, 10-61, 10-64, 10-73, 10-75, 10-76, 10-79, 10-80

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables and pipes by way of drilling and/or trenching;
- (b) construct, retain, maintain, install, use,

- inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables and cable ducts;
  - (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables and cable ducts;
  - (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity and telecommunications along the pipes, cables and cable ducts;
  - (f) retain and use the cables for the purposes of the transmission of steam, telecommunications and electricity;
  - (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the pipes, cables and cable ducts;
  - (h) install and maintain cable marker posts to identify the location of the pipes, cables and cable ducts as required for routine integrity testing;
  - (i) remove store and stockpile materials (including excavated material) within the Order land;
  - (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the

replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);

- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the pipes, cables and cable ducts;
- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, upgrade and removal of the pipes, cables and cable ducts;
- (q) when the pipes or cables are temporarily unusable, to lay down, install, use, maintain and inspect on the surface of the land steam pipes, electric lines, telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised development.

Major crossings (railway, highways)  
Plots 2-6, 2-7, 3-23, 3-24

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the pipes, pipe sleeves and cables by way

of horizontal drilling or other trenchless techniques;

- (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of transmitting steam along the pipes and electricity along the cables and cable ducts;
- (d) retain and use the pipes and cables for the purposes of the transmission of steam and electricity; and
- (e) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers).

#### Highway works

Plots 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 4-13, 4-21, 4-22, 4-23, 4-25, 4-27, 4-98, 4-105, 4-106, 4-107, 4-108, 5-23, 5-24, 5-25, 5-26, 5-27, 5-28, 5-29, 5-30, 5-36, 5-37, 5-55, 5-62

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove road works and associated infrastructure and street furniture;
- (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of road works;
- (d) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus of statutory undertakers.

#### Utility works

Plots 4-2, 4-3, 4-6, 4-7, 4-13, 4-14, 4-16, 4-17, 4-18, 4-19, 4-21, 4-22, 4-23, 4-25, 4-26, 4-27, 4-38, 4-39, 4-106, 4-107, 4-180, 5-23, 5-24, 5-25, 5-26, 5-27, 5-28, 5-29, 5-30, 5-31, 5-32, 5-33, 5-36, 5-37, 5-55, 5-56, 5-57, 5-58, 5-59, 5-60, 5-61, 5-62, 5-64, 5-65, 5-68, 5-69, 5-82

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) divert install, underground, retain, use, monitor and maintain pipes, cables, conduits or apparatus of statutory

undertakers;

- (b) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the pipes, cables, conduits or apparatus;
- (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of utility works.

“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised development.

(2) A restrictive covenant over the land to protect the apparatus from excavation.

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, retain, maintain, install, use, inspect, modify, improve, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;

(2) The right to drain on, in and/or through the land to and from adjoining land.

“adjoining land” for the purposes of this paragraph 2 means such other parts of the land within the Order limits required for the authorised development.

(3) A restrictive covenant over the land for the benefit of the remainder of the Order land to prevent anything to be done in or upon the land or any part thereof which shall or which it is reasonably foreseeable may interfere with the right to drain.

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of landscaping works.

#### Drainage rights

Plots 4-34, 4-41, 4-42, 4-43, 4-44, 4-76, 4-81, 4-82, 4-87, 4-88, 4-95, 5-7, 5-8, 5-19, 5-90, 6-1, 6-2, 6-3, 6-5, 6-11, 6-12, 6-13, 6-83

#### Landscaping access

Plots 5-76, 5-89, 6-34

(2) A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in or upon the land or any part thereof which shall or which it is reasonably foreseeable may interfere with access to the landscaping works;
- (b) prevent anything to be done in or upon the land or any part thereof which shall or which it is reasonably foreseeable may render the authorised development or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

Railway works  
Plots 8-1, 8-2, 8-3, 8-5, 8-9

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove railway works and associated infrastructure;
  - (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
  - (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of railway works.
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## SCHEDULE 11

Article 25

### MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

#### **Compensation enactments**

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973<sup>(a)</sup> has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there is substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

### **Application of the 1965 Act**

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act”

5. Section 8(1) of the Compulsory Purchase Act 1965 has effect as if references to acquiring land were to acquiring a right in the land, and Schedule 2A to that Act is to be read as if, for that Schedule, there were substituted—

## **“SCHEDULE 2A**

### **COUNTER-NOTICE REQUIRING PURCHASE OF LAND**

#### **Introduction**

1.—(1) This Schedule applies where an undertaker serves a notice to treat in respect of a right over the whole or part of a house, building or factory.

(2) But see section 2A of the Acquisition of Land Act 1981 (under which a compulsory purchase order can exclude from this Schedule land that is 9 metres or more below the surface).

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

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(a) 1973 c.26.

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

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

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

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

5. On receiving a counter-notice the undertaker must decide whether to—

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

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

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

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

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

### **Determination by Upper Tribunal**

10. On a referral under paragraph 7 the Upper Tribunal must determine whether the acquisition of the right would—

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

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right,
- (b) the proposed use of the right, and
- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

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

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

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



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

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

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

is so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

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

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

## SCHEDULE 12

Article 31

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

#### PART 1

##### OPTION A - LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

| <i>(1)</i><br><i>Area</i>     | <i>(2)</i><br><i>Number of land shown on land plan</i> | <i>(3)</i><br><i>Purpose for which temporary possession may be taken</i> | <i>(4)</i><br><i>Part of the authorised development</i> |
|-------------------------------|--|--|---|
| Borough of North Lincolnshire | 1-6, 2-10, 2-11, 3-1, 3-2, 3-16, 9-17, 10-14, 10-15    | Facilitating construction and carrying out the authorised development;   | Work Nos. 10, 11 and 15                                 |

|                               |   |   |                     |
|-------------------------------|---|---|---------------------|
|                               |   | construction compounds for carrying out the authorised development; access for carrying out the authorised development.   |                     |
| Borough of North Lincolnshire | 6-28, 6-29, 6-32, 6-36, 6-39, 6-43, 6-44, 6-45, 6-46, 6-48, 6-51, 6-52, 6-61, 6-67, 6-68, 6-69, 6-81  | Facilitating construction and carrying out the authorised development; carrying out the authorised development; access for carrying out the authorised development. | Work Nos. 3 and 12  |
| Borough of North Lincolnshire | 2-5, 2-8, 3-10, 3-15, 5-10, 9-3, 9-6, 9-7, 9-9, 9-10, 9-13, 9-15, 9-33, 9-34, 9-36, 9-40, 9-41, 9-42, 9-43, 9-44, 9-45, 10-8, 10-9, 10-41, 10-45, 10-46, 10-47, 10-51, 10-52, 10-55, 10-58, 10-59, 10-63, 10-65, 10-66, 10-67, 10-71, 10-72 | Facilitating construction and carrying out the authorised development; carrying out the authorised development; access for carrying out the authorised development. | Work Nos. 10 and 11 |
| Borough of North Lincolnshire | 6-25, 6-26, 6-27  | Laying of hardstanding and improvements to tracks; access for carrying out the authorised development.  | Work No. 3          |
| Borough of North Lincolnshire | 5-54  | Facilitating construction and carrying out the authorised development; carrying out the authorised development; access for carrying out the authorised development. | Work Nos. 10 and 13 |
| Borough of North Lincolnshire | 4-72, 5-1   | Laying of hardstanding; Facilitating construction and carrying out the authorised development.  | Work Nos. 5 and 14  |

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## PART 2

### OPTION B - LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

| <i>(1)</i><br>Area               | <i>(2)</i><br>Number of land<br>shown on land plan   | <i>(3)</i><br>Purpose for which<br>temporary possession<br>may be taken  | <i>(4)</i><br>Part of the authorised<br>development |
|----------------------------------|--|--|---|
| Borough of North<br>Lincolnshire | 1-6, 2-10, 2-11, 3-1,<br>3-2, 3-16, 9-17, 10-<br>14, 10-15   | Facilitating<br>construction and<br>carrying out the<br>authorised<br>development;<br>construction<br>compounds for<br>carrying out the<br>authorised<br>development; access<br>for carrying out the<br>authorised<br>development. | Work Nos. 10, 11 and<br>15                          |
| Borough of North<br>Lincolnshire | 6-28, 6-29, 6-32, 6-<br>36, 6-39, 6-43, 6-44,<br>6-45, 6-46, 6-48, 6-<br>51, 6-52, 6-61, 6-67,<br>6-68, 6-69, 6-81   | Facilitating<br>construction and<br>carrying out the<br>authorised<br>development;<br>carrying out the<br>authorised<br>development; access<br>for carrying out the<br>authorised<br>development.                                  | Work Nos. 3 and 12                                  |
| Borough of North<br>Lincolnshire | 2-5, 2-8, 3-10, 3-15,<br>5-10, 9-3, 9-6, 9-7, 9-<br>9, 9-10, 9-13, 9-15, 9-<br>33, 9-34, 9-36, 9-40,<br>9-41, 9-42, 9-43, 9-<br>44, 9-45, 10-8, 10-9,<br>10-41, 10-45, 10-46,<br>10-47, 10-51, 10-52,<br>10-55, 10-58, 10-59,<br>10-63, 10-65, 10-66,<br>10-67, 10-71, 10-72,<br>10-74 | Facilitating<br>construction and<br>carrying out the<br>authorised<br>development;<br>carrying out the<br>authorised<br>development; access<br>for carrying out the<br>authorised<br>development.                                  | Work Nos. 10 and 11                                 |
| Borough of North<br>Lincolnshire | 6-25, 6-26, 6-27   | Laying of<br>hardstanding and<br>improvements to<br>tracks; access for<br>carrying out the<br>authorised<br>development.   | Work No. 3  |
| Borough of North<br>Lincolnshire | 5-54   | Facilitating<br>construction and<br>carrying out the<br>authorised<br>development;<br>carrying out the   | Work Nos. 10 and 13                                 |

|                                  |           |   |                    |
|----------------------------------|-----------|---|--------------------|
| Borough of North<br>Lincolnshire | 4-72, 5-1 | authorised<br>development; access<br>for carrying out the<br>authorised<br>development.<br>Laying of<br>hardstanding;<br>Facilitating<br>construction and<br>carrying out the<br>authorised<br>development. | Work Nos. 5 and 14 |
|----------------------------------|-----------|---|--------------------|

**SCHEDULE 13**  
**REMOVAL OF HEDGEROWS**

Article 39

**PART 1**  
**HEDGEROWS**

| <i>(1)</i><br><i>Location of hedgerow</i> | <i>(2)</i><br><i>Work to be carried out</i> | <i>(3)</i><br><i>Relevant part of the<br/>authorised development</i> |
|---|---|--|
| <b>The hedgerows plan – Sheet 9</b>       |   |  |
| H404                                      | Removal                                     | Work No. 10, 11 and 14   |
| H410                                      | Removal                                     | Work No. 10, 11 and 14   |
| H412                                      | Partial removal                             | Work No. 10, 11 and 14   |
| H413                                      | Removal                                     | Work No. 10, 11 and 14   |

**PART 2**  
**IMPORTANT HEDGEROWS**

| <i>(1)</i><br><i>Location of hedgerow</i> | <i>(2)</i><br><i>Work to be carried out</i> | <i>(3)</i><br><i>Relevant part of the<br/>authorised development</i> |
|---|---|--|
| <b>The hedgerows plan – Sheet 4</b>       |   |  |
| H297                                      | Removal                                     | Work No. 5   |
| <b>The hedgerows plan – Sheet 5</b>       |   |  |
| H267                                      | Removal                                     | Work No. 5   |

## PROTECTIVE PROVISIONS

## PART 1

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

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

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(b) (agreements to adopt water main or service pipe at future date);
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act(c) (adoption of sewers and disposal works) or an agreement to adopt made under section 104 of that Act(d) (agreements to adopt sewer, drain or sewage disposal works, at future date), and includes a disposal main (within the meaning of section 219 of that Act (general interpretation)), a sludge main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“utility undertaker” means—

- 
- (a) See section 64; there are amendments not relevant to this Order.
  - (b) Section 51A was inserted by section 92(1) of the Water Act 2003 (c. 37); section 51A was amended by section 10(1) and (2) of the Water Act 2014 (c. 21).
  - (c) Section 102(4) of the Water Industry Act 1991 was amended by section 56 of, and paragraphs 2 ad 90 to, the Water Act 2014.
  - (d) Section 104 was amended by section 96(4) of the Water Act 2003. There are other amendments not relevant to this Order.

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989 (electricity supply);
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a) (gas supply);
- (g) water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 2 of the Water Industry Act 1991,

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

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

4. Regardless of the temporary stopping up of streets and public rights of way under the powers conferred by article 14 (temporary stopping up of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

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

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation

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(a) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act 2000 (c. 27) and section 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).

the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

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

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

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

8.—(1) Not less than 28 days before starting the construction of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

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

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

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

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

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

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents, and nor does sub-paragraph (1) impose any liability on the undertaker in respect of consequential losses.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it



withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

## PART 2

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

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

(2) In this Part—

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

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 (application of the electronic communications code) to 119 (power to give assistance in relation to certain proceedings) and Schedule 3A(b) (the electronics communication code) 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 of that code;

“network” means—

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

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

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

**13.** The exercise of the powers of article 33 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

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

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

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

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

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(a) 2003 c. 21.

(b) Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

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

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 48 (arbitration).

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

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

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

## PART 3

### FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

#### **Application**

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

#### **Interpretation**

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

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

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means:

- (a) 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;
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,
- (d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water, and
- (e) includes a sludge main, disposal main 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;

and for the purpose of this definition, where words are defined by section 219 of that Act, they shall be taken to have the same meaning

“functions” includes powers and duties;

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

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

### **Apparatus in stopped up streets**

19.—(1) Where any street is stopped up under article 13 (permanent stopping up of streets), where Anglian Water has apparatus in the street or accessed by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must use reasonable endeavours to grant or procure the grant of legal easements reasonably satisfactory to Anglian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 6 or the power of the undertaker to carry out works under paragraph 8.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 14 (temporary stopping up of streets), Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Acquisition of land**

20. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

21.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until:

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 7.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days’ written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47, and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, allow Anglian Water not less than 30 days to enable Anglian Water to:

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

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

22.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Anglian Water facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 47 (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 Anglian Water 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 Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation.

### **Retained apparatus**

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

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance

with sub-paragraph (3) by 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 requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water 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 18 to 19 and 21 to 23 apply as if the removal of the apparatus had been required by the undertaker under paragraph 21(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus:

- (a) 4 metres where the diameter of the pipe is less than 250 millimetres;
- (b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and
- (c) a distance to be agreed on a case by case basis and before the submission of the Plan under sub-paragraph (1) is submitted where the diameter of the pipe exceeds 400 millimetres.

### **Expenses and costs**

**24.—**(1) Subject to the following provisions of this paragraph and paragraph 26 below, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water 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 this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 47 (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 Anglian Water by virtue of subparagraph (1) must be reduced by the amount of that excess.

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

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

**25.**—(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 21(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of 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 such damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

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

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

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents and nor does sub-paragraph (1) impose any liability in respect of pure economic losses (which term for the avoidance of doubt may not constitute additional operational or administrative costs, fines and expenses, wasted expenditure or charges rendered unnecessary or the additional cost of procuring or providing replacement services).

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

## **Cooperation**

**27.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 21(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 23, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is

appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

### **Unmapped Apparatus**

28. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

### **Miscellaneous**

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

30. The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

### **Disputes**

31. Any difference or dispute arising between the undertaker and Anglian Water under this Part must, unless otherwise agreed in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with article 47 (arbitration).

### **EXPLANATORY NOTE**

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

This Order authorises The North Lincolnshire Green Energy Park (referred to in this Order as the undertaker) to construct, operate and maintain an energy from waste electricity generating station located at Stather Road, Flixborough, Scunthorpe fuelled by refuse derived fuels, with a gross generation capacity of up to 95 megawatts at ISO conditions.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 45 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Church Square House, 30-40 High Street, Scunthorpe, North Lincolnshire DN15 6NL.