



DRAFT DEVELOPMENT CONSENT ORDER (CLEAN)

Drax Bioenergy with Carbon Capture and Storage

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations, 2009 - Regulation 5(2)(k)

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DOCUMENT OWNER: PINSENT MASONS LLP

AUTHOR: ALEXIS COLEMAN

APPROVER: RICHARD GRIFFITHS

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202* No.

INFRASTRUCTURE PLANNING

**The Drax Power Station Bioenergy with Carbon Capture and
Storage Extension Order 202***

Made - - - - [***] 202*

Coming into force - - [***] 202*

CONTENTS

PART 1

PRELIMINARY

1. Citation and commencement
2. Interpretation

PART 2

PRINCIPAL POWERS

3. Development consent etc. granted by this Order
4. Maintenance of authorised development
5. Operation of authorised development
6. Benefit of the Order
7. Consent to transfer benefit of the Order
8. Application and modification of statutory provisions

PART 3

STREETS

9. Street Works
10. Power to alter layout, etc., of streets
11. Construction and maintenance of altered streets
12. Temporary closure of public rights of way
13. Access to works
14. Agreements with street authorities

PART 4

SUPPLEMENTAL POWERS

15. Discharge of water
16. Authority to survey and investigate the land

17. Removal of human remains

PART 5 POWERS OF ACQUISITION

18. Power to override easements and other rights
19. Time limit for exercise of authority to acquire rights compulsorily
20. Compulsory acquisition of rights
21. Private Rights
22. Application of the 1981 Act
23. Acquisition of subsoil only
24. Modification of Part 1 of the Compulsory Purchase Act 1965
25. Rights under or over streets
26. Temporary use of land for constructing the authorised development
27. Temporary use of land for maintaining the authorised development
28. Statutory undertakers
29. Apparatus and rights of statutory undertakers in stopped up streets
30. Recovery of costs of new connections
31. Compulsory acquisition of land – incorporation of the mineral code

PART 6 OPERATIONS

32. Felling or lopping of trees and removal of hedgerows
33. Protective works to buildings

PART 7 MISCELLANEOUS AND GENERAL

34. Protective provisions
35. Application of landlord and tenant law
36. Operational land for purposes of the 1990 Act
37. Defence to proceedings in respect of statutory nuisance
38. Certification of plans and documents, etc.
39. Service of notices
40. Procedure in relation to certain approvals etc
41. Arbitration
42. Guarantees in respect of payment of compensation
43. Electronic communications
44. Crown rights

SCHEDULES

- SCHEDULE 1 — AUTHORISED DEVELOPMENT
- SCHEDULE 2 — REQUIREMENTS
- SCHEDULE 3 — LEGISLATION TO BE DISAPPLIED
- SCHEDULE 4 — STREETS SUBJECT TO STREET WORKS

- SCHEDULE 5 — ALTERATION OF STREETS
 - PART 1 — TEMPORARY ALTERATION OF LAYOUT
 - PART 2 — PERMANENT ALTERATION OF LAYOUT
- SCHEDULE 6 — PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED
- SCHEDULE 7 — ACCESS TO WORKS
 - PART 1 — TEMPORARY MEANS OF ACCESS TO WORKS
 - PART 2 — PERMANENT MEANS OF ACCESS TO WORKS
- SCHEDULE 8 — LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED OR IN WHICH RIGHTS MAY BE EXTINGUISHED
 - PART 1 — LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED
 - PART 2 — LAND IN WHICH RIGHTS MAY BE EXTINGUISHED
- SCHEDULE 9 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS
- SCHEDULE 10 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 11 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS
- SCHEDULE 12 — PROTECTIVE PROVISIONS
 - PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
 - PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
 - PART 3 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER
 - PART 4 — FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED
- SCHEDULE 13 — DOCUMENTS AND PLANS TO BE CERTIFIED
- SCHEDULE 14 — DESIGN PARAMETERS
 - PART 1 — DESIGN PARAMETERS ASSOCIATED WITH THE CARBON CAPTURE PLANT FOR UNIT 1
 - PART 2 — DESIGN PARAMETERS ASSOCIATED WITH THE CARBON CAPTURE PLANT FOR UNIT 2
 - PART 3 — DESIGN PARAMETERS ASSOCIATED WITH THE COMMON INFRASTRUCTURE REQUIRED FOR BOTH THE CARBON CAPTURE PLANT FOR UNIT 1 AND THE CARBON CAPTURE PLANT FOR UNIT 2

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

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to chapter 3 of Part 6 of the 2008 Act and carried out in accordance with chapter 4 of Part 6 of the Infrastructure Planning (Examination Procedure) Rules 2010^(c).

(a) 2008 c.29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act 2011 (c.20).
 (b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2021/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/254, S.I. 2017/572 and S.I. 2018/378.
 (c) S.I. 2010/103, amended by S.I. 2012/635.

The Examining Authority, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74(2)(fn) of the 2008 Act made a report and recommendation to the Secretary of State.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(a) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

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

The Secretary of State, in exercise of the powers conferred by sections 114(b), 115(c), 120(d), 122(e) and 123(f) of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202* and comes into force on [***] 202*.

Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

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

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

“access and rights of way plans” means the plans of that name identified in the table at Schedule 13 (documents and plans to be certified) and which are certified by the Secretary of State as the access and rights of way plans for the purposes of this Order;

(a) S.I. 2017/572, amended by S.I. 2018/695, S.I. 2018/834 and S.I. 2018/942.

(b) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.

(c) As amended by section 160 of the Housing and Planning Act 2016 (c.22) and section 43 of the Wales Act 2017 (c.4).

(d) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.

(e) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.

(f) Ibid.

(g) 1961 c.33.

(h) 1965 c.56.

(i) 1980 c.66.

(j) 1981 c.66.

(k) 1984 c.27.

(l) 1990 c.8.

(m) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(n) 2008 c.29.

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

“AGL” means above ground level;

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act except that unless otherwise provided, it 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 described in Schedule 1 (authorised development) and any other development within the meaning of section 32 (meaning of “development”) of the 2008 Act authorised by this Order;

“book of reference” means the document of that name identified in the table at Schedule 13;

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

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

“commence” means beginning to carry out a material operation, as defined in section 56(4) of the 1990 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than the permitted preliminary works (except where stated to the contrary) and “commencement”, “commenced” and cognate expressions are to be construed accordingly;

“commissioning” means the process of assuring that all systems and components of numbered works 1(D)(i), (iii) and (v), and all systems and components of numbered works 1(D)(ii), (iv) and (vi) (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker and “commission” and other cognate expressions, in relation to the such numbered works, are to be construed accordingly;

“crown land plan” means the plan of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the crown land plan for the purposes of this Order;

“date of Unit 1 full commissioning” means the date on which the commissioning of numbered works 1(D)(i), (iii) and (v), is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 3 of Schedule 2 (requirements) to this Order;

“date of Unit 2 full commissioning” means the date on which the commissioning of numbered works 1(D)(ii), (iv) and (vi), is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 3 of Schedule 2 (requirements) to this Order;

“draft lighting strategy” means the document entitled draft lighting strategy identified in the table at Schedule 13 and which is certified by the Secretary of State as the draft lighting strategy for the purposes of this Order;

“Drax Power Limited” means Drax Power Limited (Company No. 04883589) whose registered office is at Drax Power Station, Selby, North Yorkshire YO8 8PH;

“Electricity Acts” means the Electric Lighting Act 1909(a), the Electricity (Supply) Act 1919(b), and the Electricity Act 1989(c);

“electronic communication” has the meaning given in section 15(1) (general interpretation) of the Electronic Communications Act 2000(d);

“electronic transmission” means a communication transmitted—

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

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

“environmental statement” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

(a) 1909 c.34.
(b) 1919 c.100.
(c) 1989 c.29.
(d) 2000 c.7.

“FGD plant” means the redundant flue gas desulphurisation plant situated within the Order limits and in respect of which Drax Power Limited has planning permission under the 1990 Act to undertake the decommissioning, demolition (including of 6 absorber units) and associated restoration works;

“flood risk assessment” means the document of that name identified in the table at Schedule 13 and which are certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

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

“framework construction worker travel plan” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the framework construction worker travel plan for the purposes of this Order;

“habitat regulations assessment” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the habitat regulations assessment for the purposes of this Order;

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

“holding company” has the same meaning as in section 1159 of the Companies Act 2006(a);

“land plans” means the plans of that name identified in the table at Schedule 13 and which are certified by the Secretary of State as the land plans for the purposes of this Order;

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

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

“NGESOL” means National Grid Electricity System Operator Limited (company number 11014226) whose registered office is at 1 to 3, Strand, London, WC2N 5EH;

“onshore carbon pipeline” means the onshore carbon dioxide transportation infrastructure into which the authorised development will connect;

“onshore carbon pipeline operator” means the party with responsibility for developing or operating the onshore carbon pipeline;

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

“Order limits” means the limits shown on the land plans and works plans within which the authorised development may be carried out and land acquired or used;

“outline construction traffic management plan” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“outline local employment plan” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline local employment plan for the purposes of this Order;

“outline landscape and biodiversity strategy” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline landscape and biodiversity strategy for the purposes of this Order;

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

“permitted preliminary works” means all or any of—

(a) 2006 c.46.
(b) 1981 c.67.

- (a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, demolition of buildings and removal of plant and machinery;
- (b) above ground site preparation for temporary facilities for the use of contractors;
- (c) remedial work in respect of any contamination or other adverse ground conditions;
- (d) diversion and laying of services;
- (e) the provision of temporary means of enclosure and site security for construction;
- (f) the temporary display of site notices or advertisements; or
- (g) site clearance (including vegetation removal, demolition of existing buildings and structures);

“Planning Acts” means the Town and Country Planning Act 1947(a), the Town and Country Planning Act 1962(b), the Town and Country Planning Act 1971(c), and the 1990 Act;

“plot” means any plot as may be identified by reference to a number and which is listed in the book of reference and shown on the land plans;

“proposed surface water drainage strategy” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the proposed surface water drainage strategy for the purposes of this Order;

“register of environmental actions and commitments” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the register of environmental actions and commitments for the purposes of this Order;

“relevant planning authority” means the unitary council 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) and “requirement” means any one of the requirements;

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

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

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

“street works” means the works listed in article 9(1) (street works);

“subsidiary” has the same meaning as in section 1159 of the Companies Act 2006(e);

“traffic authority” has the same meaning as in section 121A (traffic authorities) of the 1984 Act(f);

“undertaker” means Drax Power Limited or the person who has the benefit of this Order in accordance with articles 6 and 7;

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

“watercourse” includes every river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain; and

(a) 1947 c.51 as repealed by the Town and Country Planning Act 1962 and the Planning (Consequential Provisions) Act 1990 (c.11).

(b) 1962 c.38 as repealed by the Town and Country Planning Act 1971 and the Planning (Consequential Provisions) Act 1990 (c.11).

(c) 1971 c.78 as repealed by the Planning (Consequential Provisions) Act 1990 (c.11).

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

(e) 2006 c.46.

(f) Section 121A was inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by section 271 of the Greater London Authority Act 1999 (c.29), section 1(6) of, and paragraphs 70 and 95 of Schedule 1 to, the Infrastructure Act 2015, S.I. 1999/1920 and S.I. 2001/1400.

“works plans” means the plans of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between lines or points on a numbered work comprised in the authorised development and shown on the works plans and access and rights of way plans are to be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A” or “numbered work 1A”), is a reference to the work so designated in that Schedule and a reference to “Work No. 1” or “numbered work 1” means numbered works 1A to 1F inclusive and the same principle applies to such numbered works that contain letters.

(5) In this Order, the expression “includes” is to be construed without limitation.

(6) In this Order, references to any statutory body include that body’s successor bodies.

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

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

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

Maintenance of authorised development

4.—(1) The undertaker may at any time maintain the authorised development.

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

Operation of authorised development

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

Benefit of the Order

6. Subject to article 7 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker save for Work No. 1F in relation to which the provisions of this Order have effect for the benefit of the undertaker and NGESOL, Work No. 2 in relation to which the provisions of this Order have effect for the benefit of the undertaker and the

onshore carbon pipeline operator, Work No. 8A in relation to which the provisions of this Order have effect for the benefit of the undertaker and Northern Powergrid Limited, and Work No. 8B in relation to which the provisions of this Order have effect for the benefit of the undertaker and BT Openreach Limited.

Consent to transfer benefit of the Order

- 7.—(1) Subject to the powers of this Order, 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; and
 - (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be so agreed.
- (2) Where a transfer or grant has been made references in this Order to the undertaker, except in paragraph (8), include references to the transferee or the lessee.
- (3) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—
- (a) the transferee or lessee is—
 - (i) the holder of a licence under section 6 of the Electricity Act 1989;
 - (ii) a holding company or subsidiary of the undertaker; or
 - (iii) in relation to a transfer or lease of any works within a highway a highway authority responsible for the highways within the Order land; or
 - (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in full and final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.
- (4) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).
- (5) The notification referred to in paragraph (4) must state—
- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
 - (b) subject to paragraph (6), the date on which the transfer will take effect;
 - (c) the powers to be transferred or granted;
 - (d) pursuant to paragraph (8), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
 - (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.
- (6) The date specified under paragraph (5)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.
- (7) The notification given must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notification.
- (8) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit—

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

Application and modification of statutory provisions

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

- (a) section 23 (prohibition of obstructions, etc, in watercourses) of the Land Drainage Act 1991(a);
- (b) any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(b);
- (c) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within this Order; and
- (d) the provisions of the Neighbourhood Planning Act 2017(c) insofar as they relate to temporary possession of land under articles 26 (temporary use of land for carrying out the authorised development) and 27 (temporary use of land for maintaining the authorised development) of this Order.

(2) As from the date on which the authorised development (including the permitted preliminary works) is commenced any approval, grant, permission, authorisation or agreement made under the Planning Acts or Electricity Acts prior to that date is hereby excluded and does not apply but only insofar as such approval, grant, permission, authorisation or agreement relates to the Order limits and is inconsistent with the authorised development and anything approved under the requirements.

(3) As from the date on which this Order takes effect the undertaker must not commence, or to the extent already commenced must not continue to carry out, any works consented by the Drax Power (Generating Stations) Order 2019 other than as set out in this Order.

(4) The carrying out of Work No. 8A shall not be regarded as conflicting with or constituting non-compliance by any person with, any conditions of a planning permission granted under section 57(f) (requirement of planning permission) of the 1990 Act which relate to plots 01-108, 01-110 and 01-115 of the land plans or land adjacent to those plots outside of the Order limits.

PART 3 STREETS

Street Works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus under the street;

(a) 1991 c.59. Section 23 was amended by paragraph 192(2) of Schedule 22 to the Environment Act 1995 (c.25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c.29) and S.I. 2013/755.

(b) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c.21).

(c) 2017 c.20.

- (d) maintain apparatus under the street, change its position or remove it;
- (e) repair, replace or otherwise alter the surface or structure of the street or any culvert under the street; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

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

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

Power to alter layout, etc., of streets

10.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the streets—

- (a) in the case of the streets specified in column 2 of the table in Part 1 (temporary alteration of layout) of Schedule 5 (alteration of streets) temporarily in the manner specified in relation to that street in column (3); and
- (b) in the case of the streets specified in column 2 of the table in Part 2 (permanent alteration of layout) of Schedule 5 (alteration of streets) permanently in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) alter, remove, modify and restore street furniture;
- (c) trim vegetation in the street; and
- (d) make and maintain passing places.

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

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

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

Construction and maintenance of altered streets

11.—(1) Subject to paragraph (3), the temporary alterations to each of the streets specified in Part 1 (temporary alteration of layout) of Schedule 5 (alteration of streets) must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker.

(2) The permanent alterations to each of the streets specified in Part 2 (permanent alteration of layout) of Schedule 5 (alteration of streets) must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed by the street authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article 10(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

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

(5) For the purposes of a defence under paragraph (3), a court must in particular have regard to the following matters—

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

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(6) Paragraphs (1) to (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Temporary closure of public rights of way

12.—(1) The undertaker, during and for the purposes of or incidental to constructing or maintaining the authorised development, may temporarily prohibit the use of, authorise the use of, alter or divert any public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the public right of way;
- (b) authorise the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and
- (c) subject to paragraph (2), prevent all persons from passing along the public right of way.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily prohibit the use of, authorise the use of, restrict the use of, alter or divert the public rights of way specified in column (2) of the table in Schedule 6 (public rights of way to be temporarily closed) to the extent specified in column (3) of that table.

(4) The undertaker must not temporarily, prohibit the use of, restrict the use of, authorise the use of, alter or divert—

- (a) any public right of way specified in paragraph (3) without first consulting the street authority; and
- (b) any other public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

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

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any public right of way which has been temporarily closed under the powers conferred by this article and within the Order limits as a temporary working site.

(7) In this article expressions used in this article and in the 1984 Act have the same meaning.

Access to works

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

- (a) form and lay out the temporary means of access in the location specified in Part 1 (temporary means of access to works) of Schedule 7 (access to works);
- (b) form and lay out the permanent means of access in the location specified in Part 2 (permanent means of access to works) of Schedule 7 (access to works); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve 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 undertaker must restore any access that has been temporarily created under this Order to the reasonable satisfaction of the street authority.

Agreements with street authorities

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

- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (d) the undertaking in the street of any of the works referred to in article 9 (street works); or
- (e) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing public maintainable highway; or
 - (ii) which the undertaker and highway authority agree to be adopted as public 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

SUPPLEMENTAL POWERS

Discharge of water

15.—(1) Subject to paragraphs (3), (4) and (7) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs whose consent may be given subject to 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) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016(b).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

Authority to survey and investigate the land

16.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development or upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—

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

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

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

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

(a) 1991 c.56. Section 106 was amended by sections 35(1), 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43), sections 32(2) and 99 of the Water Act 2003 (c.37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c.29).

(b) S.I. 2016/1154.

(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

(d) 1991 c.57.

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

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

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

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

Removal of human remains

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

(2) Before any such remains are removed from the Order land the undertaker must give notice of the intended removal, describing the Order 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 the Order land.

(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 Order land 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 reinterred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable after such reinterment 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 not 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 is to 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 reintering or cremating the remains of any deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order 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 (10) the undertaker must remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves 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 reinterment or cremation of the remains.

(10) On the reinterment or cremation of any remains under this article—

- (a) a certificate of reinterment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and
- (b) a copy of the certificate of reinterment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

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

(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) of the Burial Act 1857(a) is not to apply to a removal carried out in accordance with this article.

PART 5

POWERS OF ACQUISITION

Power to override easements and other rights

18.—(1) Any authorised activity which takes place on land within the Order land (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

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

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by the Order; or
- (c) the use of any land within the Order limits (including the temporary use of land).

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

(a) 1857 c.81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (S.I. 2014/1). There are other amendments to this Act which are not relevant to this Order.

- (4) Where an interest, right or restriction is overridden by paragraph (1), compensation—
- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
 - (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Section 10(2) of the 1965 Act applies to paragraph (4) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

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

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

the liability is enforceable against the undertaker.

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

Time limit for exercise of authority to acquire rights compulsorily

19.—(1) After the end of the period of seven years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 22 (application of the 1981 Act).

(2) The authority conferred by article 26 (temporary use of land for constructing 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

20.—(1) Subject to paragraph (2) and article 26 (temporary use of land for constructing the authorised development), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land as may be required for the authorised development or to facilitate it by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 21 (private rights) and article 28 (statutory undertakers), in the case of the Order land specified in column (1) of the table in Part 1 of Schedule 8 (land in which only new rights etc. may be acquired or in which rights may be extinguished) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants to the extent 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) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) 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 or imposition of a restriction under paragraph (1) or (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.

(7) This article is subject to article 44 (Crown rights).

Private Rights

21.—(1) Subject to the provisions of this article, all private rights over the Order land specified in column (1) of the table in Part 2 of Schedule 8 (land in which only new rights etc. may be acquired or in which rights may be extinguished) are extinguished to the extent specified in relation to that land in column (2) of that Part of that Schedule on commencement of any activity authorised by the Order which interferes with or breaches those rights.

(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 20 (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 acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the rights are acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right; or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

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 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 28 (statutory undertakers) applies.

(6) Paragraphs (2) 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,

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

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

Application of the 1981 Act

22.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of the Act), for subsection 2 substitute—

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

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

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

(6) In section 5B(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in 5A” substitute section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the seven year period mentioned in article 19 (time limit for exercise of authority to acquire rights compulsorily) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*”.

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

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

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

(2) But see article 23(3) (acquisition of subsoil only) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202* which excludes the acquisition of subsoil only from this Schedule..

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 24 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition under this Order.

Acquisition of subsoil only

23.—(1) The undertaker may acquire compulsorily such rights in the subsoil of the land referred to in article 20 (compulsory acquisition of rights) as may be required for any purpose for which rights in that land may be acquired under that provision instead of acquiring rights in the whole of the land.

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

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

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

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

Modification of Part 1 of the Compulsory Purchase Act 1965

24.—(1) Part 1 of the 1965 Act (compulsory acquisition under Acquisition of Land Act 1946), as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the seven year period mentioned in article 19 (time limit for exercise of authority to acquire rights compulsorily) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*”.

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

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

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 19 (time limit for exercise of authority to acquire rights compulsorily) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*”.

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

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

(2) But see article 23(3) (acquisition of subsoil only) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*, which excludes the acquisition of subsoil only from this Schedule.; and

(b) after paragraph 29 insert—

PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 26 (temporary use of land for constructing the authorised development) or article 27 (temporary use of land for maintaining the authorised development) or article 33 (protective works to buildings) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*..

Rights under or over streets

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

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land 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 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for constructing the authorised development

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

- (a) enter on and take temporary possession of—
 - (i) so much of the land specified in column (1) of the table in Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of the table; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);
- (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
- (c) construct temporary works, haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;
- (e) construct any works, on that land as are mentioned in Schedule 1 (authorised development); and
- (f) carry out mitigation works required under the requirements in Schedule 2 (requirements).

(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 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.

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

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the later of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning; or
- (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the later of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired or leased the land.

(5) 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 in relation to the land or has 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 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;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 4 (streets subject to street works); or
- (d) restore the land on which any works have been carried out under paragraph (1)(e) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2 (requirements).

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

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

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

(9) The undertaker must not compulsorily acquire, acquire new rights over or impose restrictive covenants over, the land referred to in paragraph (1)(a)(i) under this Order.

(10) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Part 1 of Schedule 8 (land in which only new rights etc. may be acquired or in which rights may be extinguished) under article 20 (compulsory acquisition of rights); or
- (b) acquiring rights in the subsoil of that land under article 23 (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 25 (rights under or over streets).

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

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

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

Temporary use of land for maintaining the authorised development

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

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

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

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

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

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

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

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

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

(8) Nothing in this article affects any liability to pay compensation under section 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 (6).

(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 under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article “the maintenance period” means the period of five years beginning with the earlier of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning except in respect of any part of the authorised development which is comprised of landscaping where “the maintenance period” means such period as set out in the landscape and biodiversity strategy which is approved by the relevant planning authority pursuant to requirement 7 beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

28. Subject to the provisions of Schedule 12 (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 plans within the Order land;
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land; and
- (c) create and acquire compulsorily the new rights over land belonging to statutory undertakers within the Order land.

Apparatus and rights of statutory undertakers in stopped up streets

29. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc., of streets), article 11 (construction and maintenance of altered streets) or article 12 (temporary closure of public rights of way) any statutory undertaker whose apparatus is under, in on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 12 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

30.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 28 (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 28 (statutory undertakers), any person who is—

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

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 article 29 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

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

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

Compulsory acquisition of land – incorporation of the mineral code

31. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(b) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”; and
- (c) for the “undertaking” substitute “authorised development”.

PART 6 OPERATIONS

Felling or lopping of trees and removal of hedgerows

32.—(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 from—

- (a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;
- (b) constituting a danger to persons using the authorised development; or
- (c) obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

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

(a) 2003 c.21.
(b) 1981 c.67.

(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.

(4) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), remove the hedgerows within the Order limits that may be required for the purposes of constructing the authorised development.

(5) The undertaker may not pursuant to paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the public maintainable highway without the prior consent of the highway authority.

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

Protective works to buildings

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

(2) Protective works may be carried out—

- (a) at any time before or during the construction of any part of the authorised development in the vicinity of the building; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the later of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning.

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

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

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d) the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 41 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and

(a) S.I. 1997/1160.

- (b) within the period of five years beginning with the later of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

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

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

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

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or use of the authorised development.

PART 7

MISCELLANEOUS AND GENERAL

Protective provisions

34. Schedule 12 (protective provisions) has effect.

Application of landlord and tenant law

35.—(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

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

Defence to proceedings in respect of statutory nuisance

37.—(1) Where proceedings are brought under section 82(1) (summary of proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within section 79(1) (statutory nuisances and inspections therefore) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance or decommissioning of the authorised development and that the nuisance is attributable to the construction or maintenance 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), or section 65 (noise exceeding registered level) of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction, maintenance or decommissioning of the authorised development and that it cannot be reasonably avoided; or
- (b) is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded) of that Act, do not apply where the consent relates to the use of premises by the undertaker for the purposes of, or in connection with the construction, maintenance or decommissioning of the authorised development.

Certification of plans and documents, etc.

38.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table at Schedule 13 (documents and plans to be certified) 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

39.—(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 (references to service by post) of the Interpretation Act 1978(c) as it applies for the purposes of this article, the proper address of any person in relation to the service

(a) 1990 c.43. Section 82 was amended by section 103 to the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.

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

(c) 1978 c.30. Section 7 was amended by paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

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

(4) Where for the purpose 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) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 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

40.—(1) Where an application is made to or request is made of, a consenting authority 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 to be validly given, must be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(3) Schedule 11 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 11 (procedure for discharge of requirements) and where stated to the contrary if, within eight weeks (or such longer period as may be agreed between the undertaker and the relevant consenting authority in writing) after the application or request has been submitted to a consenting authority it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

(6) Schedule 11 (procedure for discharge of requirements) does not apply in respect of any consents, agreements, or approvals contemplated by the provisions of Schedule 12 (protective provisions) or any dispute under article 33(6) (protective works to buildings) to which paragraph (4) applies.

(7) In this article “consenting authority” means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 12 (protective provisions).

Arbitration

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

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

Guarantees in respect of payment of compensation

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

- (a) a guarantee, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 18 (power to override easements and other rights);
- (b) article 20 (compulsory acquisition of rights);
- (c) article 21 (private rights);
- (d) article 25 (rights under or over streets);
- (e) article 26 (temporary use of land for constructing the authorised development);
- (f) article 27 (temporary use of land for maintaining the authorised development); and
- (g) article 28 (statutory undertakers).

(3) A guarantee or alternative form of security 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 a form as to be capable of enforcement by such a person.

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

Electronic communications

43.—(1) In this Order—

- (a) references to documents, maps, plans, drawings, certificates or other documents, or to copies, include references to them in electronic form; and

- (b) references to a form of communication being “in writing” include references to an electronic communication that satisfies the conditions in paragraph (2) and “written” and other cognate expressions are to be construed accordingly.

(2) The conditions are that—

- (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; and
- (b) the communication is—
 - (i) capable of being assessed by the recipient;
 - (ii) legible in all material respects; and
 - (iii) sufficiently permanent to be used for subsequent reference.

(3) 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 part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(4) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (5).

(5) 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 may not be less than seven days after the date on which the notice is given.

Crown rights

44.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description—

- (a) identified as Crown land on the crown land plan;
- (b) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (c) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (d) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown Land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the administrative area of The North Yorkshire Council a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

The nationally significant infrastructure project comprises the extension to the generating station known as the Drax Power Station, which has an existing gross electrical output capacity of over 50 megawatts, comprising all or any part of work number 1 in this Schedule—

Work No. 1— carbon capture plant as an extension to an existing generating station comprising—

- (a) **Work No. 1A**— works to modify and upgrade the existing generating station water pre-treatment plant comprising updated technology retrofitted to the existing four sedimentation tanks;
- (b) **Work No. 1B**— works to modify, upgrade and extend the existing generating station cooling water system including—
 - (i) modifications, upgrades and extension to existing generating station cooling water pumps, and reconfiguration of discharge manifold;
 - (ii) works for the distribution and usage of cooling water within the carbon capture plant and supporting systems including—
 - (aa) supply lines to the carbon capture plant;
 - (bb) filtering equipment and heat exchangers;
 - (cc) biocide / chemical dosing;
 - (dd) pipework connections from the reconfigured discharge manifold to heat exchangers and other components of the carbon capture plant; and
 - (iii) return into the existing generating station cooling infrastructure comprising return lines from the carbon capture plant to the existing generating station cooling towers;
- (c) **Work No. 1C**— works to modify, upgrade and extend the existing generating station boilers and turbines for the carbon capture plant process steam connection comprising—
 - (i) **Work No. 1C(i)**— works in connection with Unit 1 of the existing generating station including—
 - (aa) extraction of steam from Unit 1 of the existing generating station including either or both of (i) interconnection through a boiler tap out of the hot reheat section of the host boiler from Unit 1 of the existing generating station, and (ii) interconnection into the host turbine from Unit 1 of the existing generating station;
 - (bb) modifications to the boiler and/or turbine from Unit 1 of the existing generating station;
 - (cc) pipelines and pipeline supports carrying steam from Unit 1 of the existing generating station to the combined power turbines and/or pressure reducing de-superheating stations including drains and flash vessels; and
 - (dd) return of condensate from the carbon capture plant to Unit 1 of the existing generating station including pipelines and pipeline supports carrying condensate to Unit 1 of the existing generating station interconnection back into the condensate system within Unit 1 of the existing generating station;
 - (ii) **Work No. 1C(ii)**— works in connection with Unit 2 of the existing generating station including—

- (aa) extraction of steam from Unit 2 of the existing generating station including either or both of (i) interconnection through a boiler tap out of the hot reheat section of the host boiler from Unit 2 of the existing generating station and (ii) interconnection into the host turbine from Unit 2 of the existing generating station;
- (bb) modifications to the boiler and/or turbine from Unit 2 of the existing generating station;
- (cc) pipelines and pipeline supports carrying steam from Unit 2 of the existing generating station to the combined power turbines and/or pressure reducing de-superheating stations including drains and flash vessels; and
- (dd) return of condensate from the carbon capture plant to Unit 2 of the existing generating station including pipelines and pipeline supports carrying condensate to Unit 2 of the existing generating station and interconnection back into the condensate system- within Unit 2 of the existing generating station;
- (iii) **Work No. 1C(iii)**— processing of steam from Unit 1 and Unit 2 of the existing generating station by the carbon capture plant including—
 - (aa) up to two combined power steam turbines and generator sets including all balance of plant and ancillaries;
 - (bb) up to two combined power steam turbine buildings;
 - (cc) up to two pressure reducing de-superheating stations;
 - (dd) up to two pressure reducing de-superheating stations buildings; and
 - (ee) a new overground pipe bridge structure carrying steam, return condensate and connecting pipework including drainage points between the combined power steam turbines and the carbon capture plant;
- (d) **Work No. 1D**— up to two carbon dioxide capture plants for Unit 1 and Unit 2 of the existing generating station comprising—
 - (i) **Work No. 1D(i)**— absorber and quench system for the carbon capture plant for Unit 1 of the existing generating station including—
 - (aa) one quench column; and
 - (bb) one absorber column;
 - (ii) **Work No. 1D(ii)**— absorber and quench system for the carbon capture plant for Unit 2 of the existing generating station including—
 - (aa) one quench column; and
 - (bb) one absorber column;
 - (iii) **Work No. 1D(iii)**— solvent regeneration system and rich solvent / lean solvent heat exchangers for the carbon capture plant for Unit 1 of the existing generation station including—
 - (aa) up to two regenerators;
 - (bb) main process and service rack including rich solvent / lean solvent heat exchangers; and
 - (cc) drums and vessels;
 - (iv) **Work No. 1D(iv)**— solvent regeneration system and rich solvent / lean solvent heat exchangers for the carbon capture plant for Unit 2 of the existing generation station including—
 - (aa) up to two regenerators;
 - (bb) main process and service rack including rich solvent / lean solvent heat exchangers; and
 - (cc) drums and vessels;

- (v) **Work No. 1D(v)**— supporting infrastructure for the carbon capture plant for Unit 1 of the existing generating station including—
 - (aa) up to two gas / gas heat exchangers;
 - (bb) up to four flue gas booster fans;
 - (cc) solvent pumps; and
 - (dd) monitoring and metering equipment;
- (vi) **Work No. 1D (vi)**— supporting infrastructure for the carbon capture plant for Unit 2 of the existing generating station including—
 - (aa) up to two gas / gas heat exchangers;
 - (bb) up to four flue gas booster fans;
 - (cc) solvent pumps; and
 - (dd) monitoring and metering equipment;
- (vii) **Work No. 1D (vii)**— common solvent storage and make-up system infrastructure for the carbon capture plants for Unit 1 and Unit 2 of the existing generating station comprising up to four banded solvent storage compounds;
- (viii) **Work No. 1D (viii)**— common supporting infrastructure including—
 - (aa) a wastewater treatment plant;
 - (bb) up to eight chemical storage areas;
 - (cc) road tanker loading and unloading areas;
 - (dd) all firefighting systems including up to four fire water tanks; and
 - (ee) works connecting Work Nos. 1D(i) to 1D(vii) to Work No. 1E and the existing generating station;
- (e) **Work No. 1E**— carbon dioxide processing and compression plant comprising—
 - (i) **Work No. 1E(i)**— carbon dioxide processing and compression plant for the carbon capture plant for Unit 1 of the existing generating station including—
 - (aa) up to eight carbon dioxide gas compressors enclosed in up to four buildings; and
 - (bb) up to two carbon dioxide dryers and associated treatment and exporting plant including filters, conditioners, recirculating compressors, heated safety valves, oxygen removal equipment, hydrogen generation, hydrogen storage, gas detection safety systems, metering and system process vents;
 - (ii) **Work No. 1E (ii)**— carbon dioxide processing and compression plant for the carbon capture for Unit 2 of the existing generating station including—
 - (aa) up to eight carbon dioxide gas compressors enclosed in up to four buildings; and
 - (bb) up to two carbon dioxide dryers and associated treatment and exporting plant including— filters, conditioners, recirculating compressors, heated safety valves, oxygen removal equipment, hydrogen generation, hydrogen storage, gas detection safety systems, metering and system process vents;
 - (iii) **Work No. 1E (iii)**— one carbon dioxide main vent stack and one silencer for the carbon capture plant for Unit 1 of the existing generating station;
 - (iv) **Work No. 1E (iv)**— one carbon dioxide main vent stack and one silencer for the carbon capture plant for Unit 2 of the existing generating station;
- (f) **Work No. 1F**— integral electrical connections within the existing generating station and carbon capture plant including—
 - (i) upgrade to the existing 400 kV National Grid substation;
 - (ii) modifications and upgrade to the 132 kV air insulated switchgear including but not limited to circuit breakers, busbar disconnectors, and earth switches;

- (iii) decommissioning and removal of existing oil-filled cabling, and installation of upgraded cabling as part of the connection from the 132 kV air insulated switchgear in Work No. 1F(ii) to the new distribution voltage infrastructure- in Work No. 1F(v);
- (iv) destringing, upgrading and restringing of existing overhead lines as part of the connection from the switchgear in Work No. 1F(ii) to the new distribution voltage infrastructure in Work No. 1F(v);
- (v) installation of new distribution voltage infrastructure including associated HV and LV transformers and distribution voltage cabling to and from the switchroom buildings and the combined power turbines;
- (vi) installation of up to two combined power turbine power control cubicles and associated generator step-up transformers;
- (vii) installation of up to thirty switchroom buildings; and
- (viii) installation of facilities for storage of excess electrical power and / or for electrical load balancing.

And associated development within the meaning of section 115(2) of the 2008 Act in connection with the nationally significant infrastructure project referred to in Work No. 1 comprising—

Work No. 2— infrastructure to transport compressed carbon dioxide from Work No. 1E to storage and transport infrastructure operated by the onshore carbon pipeline operator comprising one of the following—

- (a) a new carbon dioxide delivery terminal compound and pipelines including—
 - (i) a new underground or aboveground carbon dioxide pipeline connecting Work No. 1E with this Work No. 2(a);
 - (ii) a pigging station;
 - (iii) safety valves;
 - (iv) monitoring and metering equipment;
 - (v) filters;
 - (vi) system process vents;
 - (vii) a new underground or aboveground carbon dioxide pipeline connecting this Work No. 2(a) to a terminal point within the Order limits;
 - (viii) trenching works; and
 - (ix) pipeline field marker posts and cathodic protection test / transformer rectifier unit(s);
or
- (b) a new carbon dioxide delivery pipeline including—
 - (i) a new underground or aboveground carbon dioxide pipeline connecting Work No. 1E to a terminal point within the Order limits;
 - (ii) trenching works;
 - (iii) pipeline field marker posts and cathodic protection test / transformer rectifier unit(s);
and
 - (iv) monitoring and metering equipment.

Work No. 3— supporting works in connection with and in addition to Work Nos. 1, 2 and 5 including—

- (a) a new pipeline or pipelines connecting Work Nos. 1A and 1B to the existing generating station's on-site purge chamber;
- (b) surface water collection and drainage pipe works to discharge to cooling towers;
- (c) modification to and refurbishment of existing electrostatic precipitators of Unit 1 and Unit 2 of the existing generating station;
- (d) cable connection back to existing generating station central control room;

- (e) service and pipeline connections for supply of heat to wastewater treatment plant;
- (f) replacement of the main generator transformers for Unit 1 and Unit 2 of the existing generating station;
- (g) other minor auxiliary infrastructure required to support the carbon capture process;
- (h) ground raising and ground preparation works;
- (i) electricity, water, wastewater, control and telecommunications and other services;
- (j) trenching works;
- (k) below ground drainage works;
- (l) security and site lighting infrastructure, including cameras, perimeter fencing and lighting columns;
- (m) tree and hedge removal;
- (n) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments;
- (o) civil works and support structures;
- (p) works required in order to protect existing utilities infrastructure;
- (q) internal roadways, car parking, pedestrian network, cycle parking and hardstanding; and
- (r) site drainage and waste management infrastructure, including relocation of existing infrastructure as required.

Work No. 4— works to facilitate the safe entry and navigation of construction vehicles for the purpose of construction access to Work Nos. 1 to 5 and 7 including—

- (a) road modifications;
- (b) temporary removal or reinstatement of structures, features and landscaping; and
- (c) temporary modification and subsequent reinstatement of external parts of structures and buildings.

Work No. 5— temporary construction laydown areas including—

- (a) car parking;
- (b) areas of hardstanding;
- (c) laydown areas for storage including of plant, equipment, materials and topsoil;
- (d) site and welfare offices, fabrication areas and workshops; and
- (e) electricity, water, waste water and telecommunications connections.

Work No. 6— habitat provision area including—

- (a) soft landscaping including planting;
- (b) landscape and biodiversity enhancement measures; and
- (c) security fencing, gates, boundary treatment and other means of enclosure.

Work No. 7— works to create a floodplain compensation area including—

- (a) partial removal of existing grassland or vegetation;
- (b) earthworks to include excavation and movement of material within the floodplain compensation area; and
- (c) landscape and habitat reinstatement and enhancement measures.

Work No. 8— works to facilitate the delivery of abnormal indivisible loads to the site comprising—

- (a) **Work No. 8A**— diversion of existing electrical 11 kV overhead lines including—
 - (i) removal or realignment of sections of existing electrical 11 kV overhead lines;
 - (ii) installation of new sections of electrical 11 kV overhead lines or new sections of electrical 11 kV underground cabling;

- (iii) installation of new, or relocation, or replacement, or removal of existing, electrical overhead line poles;
 - (iv) removal of existing infrastructure for detecting and interrupting transient faults on the electrical network;
 - (v) construction of new joint bays to allow connection of new electrical 11 kV underground cabling with existing electrical 11 kV underground cabling;
 - (vi) civil works including excavation, trenching, and reinstatement;
 - (vii) works required in order to protect existing utilities infrastructure;
 - (viii) vegetation removal and landscape and habitat reinstatement measures;
 - (ix) works to facilitate construction access including temporary road modifications and temporary removal or reinstatement of structures, features and landscaping; and
 - (x) temporary construction laydown area.
- (b) **Work No. 8B**— diversion of existing telecommunication overhead lines including—
- (i) removal or realignment of sections of existing telecommunication overhead lines;
 - (ii) installation of new sections of telecommunication overhead lines;
 - (iii) installation of new, or relocation or replacement, of existing, telecommunication overhead line poles;
 - (iv) general civil works;
 - (v) works required in order to protect existing utilities infrastructure;
 - (vi) vegetation removal and landscape and habitat reinstatement measures;
 - (vii) works to facilitate construction access including temporary road modifications and temporary removal or reinstatement of structures, features and landscaping; and
 - (viii) temporary construction laydown area.

In connection with and in addition to Work Nos. 1 to 8 further associated development including—

- (a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (b) electrical, gas, water, foul water drainage and telecommunications infrastructure connections and works to, and works to alter the position of, such services and utilities connections;
- (c) hard standing and hard landscaping;
- (d) biodiversity measures;
- (e) closed circuit television cameras and columns and other security measures;
- (f) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of the services and utilities; and works for the protection of buildings and land;
- (g) temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage;
- (h) vehicle parking and cycle storage facilities;
- (i) accesses, roads and pedestrian and cycle routes;
- (j) tunnelling, boring and drilling works,

and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to

give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 2

Commencement of the authorised development

1. The authorised development must not be commenced after the expiration of seven years from the date this Order comes into force.

Phasing of the authorised development

2.—(1) No part of the authorised development (save for numbered work 8) is to commence until a written scheme setting out the phasing of construction of numbered works 1, 2, 3, 4 and 7 has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must confirm that the construction of any part of the authorised development would not occur in parallel with any part of the demolition of the FGD plant.

(3) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

Notice of date of full commissioning

3.—(1) Within seven days of the completion of the commissioning of numbered works 1(D)(i), (iii) and (v), the undertaker must provide the relevant planning authority with notice of the date of Unit 1 full commissioning.

(2) Within seven days of the completion of the commissioning of numbered works 1(D)(ii), (iv) and (vi), the undertaker must provide the relevant planning authority with notice of the date of Unit 2 full commissioning.

Requirement for written approval

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

Approved details and amendments to them

5.—(1) With respect to the documents certified under article 38 (certification of plans and documents, etc), the parameters specified in the table at Schedule 14 (design parameters) and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any requirement (together “Approved Documents, Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Documents, Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Documents, Plans, Parameters, Details or Schemes are to be taken to include the amendments approved by the relevant planning authority pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to Approved Documents, Plans, Parameters, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement.

Detailed design approval

6.—(1) In relation to any part of the authorised development comprised in numbered works 1, 2, and 3, no development of that part is to commence until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings; and
- (d) the internal vehicular access and circulation roads, vehicle parking, cycle parking and routes, and pedestrian facilities and routes.

(2) The authorised development must be carried out in accordance with the parameters in Schedule 14 (design parameters) and the details submitted must accord with items D1, D2, D3, D5, D6, D7, D8, D9, D10, H1 WE1, WE2, WE3, WE4, WE5, WE7, CC1, CC2 and GHG1 of the register of environmental actions and commitments.

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

Provision of landscape and biodiversity mitigation and enhancement

7.—(1) No phase of the authorised development or part of numbered works 5, 6 and 8 is to commence until, a written strategy for that phase or part, which is substantially in accordance with the outline landscape and biodiversity strategy, has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The strategies submitted and approved pursuant to sub-paragraph (1) must include details of—

- (a) the hedgerows to be removed including—
 - (i) where the hedgerows are located; and
 - (ii) if and how they are to be replaced,
- (b) all proposed hard and soft landscaping works;
- (c) ecological mitigation;
- (d) enhancement measures;
- (e) the location, number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting;
- (f) cultivation, importing of materials and other operations to ensure plant establishment;
- (g) hard surfacing materials;
- (h) a confirmation that numbered work 6 is in accordance with items G8, E2, E6, E8, E10, E11 and E14 of the register of environmental actions and commitments;
- (i) an implementation timetable;
- (j) annual landscaping and biodiversity management and maintenance;
- (k) the ecological surveys required to be carried out prior to commencement of a numbered work, or following completion of a numbered work in order to monitor the effect of the ecological mitigation measures and the monitoring regime to be taken forward following those initial surveys; and
- (l) an explanation for how the design of the numbered works comprised in the part of the authorised development, which is the subject of the strategy, has sought to minimise the biodiversity net loss as a result of the authorised development as far as reasonably practicable.

(3) Any shrub or tree planted as part of the approved strategy that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting seasons with a specimen of the same species and size as that originally planted.

(4) The strategies must be implemented in accordance with the implementation timetable and the measures implemented pursuant to the strategies maintained as approved once implemented throughout the operation of the numbered works to which they relate.

(5) For the purposes of sub-paragraph (1) a phase of the authorised development means a phase as identified in the phasing plan with respect to numbered works 1, 2, 3, 4 and 7 as approved pursuant to sub-paragraph (1) of Requirement 2.

External lighting during operation

8.—(1) Prior to the earlier of date of Unit 1 full commissioning or date of Unit 2 full commissioning a written scheme for the permanent external lighting to be installed for the purposes of normal operation for numbered works 1, 2 and 3 must be submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) of this requirement must be substantially in accordance with the principles set out in the draft lighting strategy and must include details of the permanent external lighting to be installed for the purposes of the operation of the relevant numbered works.

(3) The scheme must be implemented and maintained as approved.

Highway accesses during construction

9.—(1) Construction of each of the accesses listed in Schedule 7 (access to works) must not commence until details of the siting, design and layout (including visibility splays and construction specification) of that access, and in respect of the accesses listed in Part 1 of Schedule 7 only, the means of reinstating the temporary means of access after construction, has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The highway accesses approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details.

Surface water drainage

10.—(1) Each of numbered works 1, 2 and 3 of the authorised development must not commence until a surface water drainage scheme for that numbered work has been submitted to, and after consultation with the Environment Agency, lead local flood authority and relevant internal drainage board, approved by the relevant planning authority.

(2) The surface water drainage scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the principles set out in sections 5 and 6 of the proposed surface water drainage strategy.

(3) The schemes must be implemented and maintained as approved throughout the operation of the numbered works to which they relate.

Flood risk mitigation

11.—(1) The authorised development must be carried out and operated in accordance with the flood risk assessment.

(2) No later than 20 years following the date of full commissioning, the undertaker must notify the relevant planning authority and the Environment Agency whether it anticipates that the operation of Work No. 1 will continue past the 25th anniversary of the date of full commissioning.

(3) If a notification under sub-paragraph (2) indicates that the undertaker anticipates that the operation of Work No. 1 will continue past the 25th anniversary date of full commissioning, it must, unless otherwise agreed by the Environment Agency, submit for approval to the Environment Agency—

- (a) an updated flood risk assessment of the flood risk arising from the continued operation of Work No. 1 past the 25th anniversary of the date of full commissioning;
- (b) the details of any mitigation or compensation measures that the flood risk assessment under sub-paragraph (a) suggests are necessary;

(c) the implementation timetable (including identifying the need for (but not requiring a specific programme for the obtaining of) any consents) for any measures identified under sub-paragraph (b); and

(d) retention proposals for any measures identified under sub-paragraph (b).

(4) The undertaker must share the details approved by the Environment Agency under sub-paragraph (3) with the relevant planning authority within 5 days of such approval being given.

(5) The undertaker must implement the measures approved under sub-paragraph (3)(b) in accordance with the implementation timetable approved under sub-paragraph (3)(c) no later than the 25th anniversary of the date of full commissioning of Work No. 1 or such other time period as is agreed with the Environment Agency and must retain them for the lifetime of Work No. 1 in accordance with the retention proposals approved under sub-paragraph (3)(d).

(6) The undertaker must not continue operation of Work No. 1 beyond the 25th anniversary of the date of full commissioning unless the Environment Agency has given its approval under sub-paragraph (3) and the undertaker has complied with sub-paragraph (4), unless otherwise agreed in writing by the Environment Agency.

(7) For the purposes of this requirement ‘the date of full commissioning’ means the earlier of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning.

Ground conditions

12.—(1) No part of the numbered works 1, 2, 3, 5 and 7 is to commence (including permitted preliminary works comprising demolition of existing structures, remedial work in respect of any contamination or other adverse ground conditions or the diversion and laying of services) until a written strategy in relation to the identification and remediation of any risks associated with the contamination of the Order limits associated with that numbered work has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The strategy submitted and approved pursuant to sub-paragraph (1) must—

(a) include a site investigation scheme, based on the preliminary risk assessment set out in appendix 11.1 of the environmental statement and providing details of the detailed risk assessment to be carried out for the receptors on or in the vicinity of the Order limits that may be affected by the authorised development;

(b) set out how the outcomes of the site investigation scheme and detailed risk assessment carried out pursuant to sub-paragraph 12(2)(a) above will be reported, and provide for the submission and approval by the relevant planning authority of an options appraisal and remediation strategy based on such outcomes and providing details of any remediation measures required and how they are to be carried out;

(c) include an earthworks specification setting out protocols for testing and limiting values to ensure that imported materials are suitable for their intended use in terms of their chemical or geotechnical quality; and

(d) include a verification plan identifying the data to be collected in order to demonstrate that the remediation measures set out in the options appraisal and remediation strategy prepared pursuant to sub-paragraph 12(2)(b) above have been completed and are effective, and any requirement for long term monitoring of pollutant linkages, maintenance or arrangements for contingency action.

(3) Prior to the date of Unit 1 full commissioning a report prepared substantially in accordance with the verification plan prepared pursuant to sub-paragraph 12(2)(d) and approved pursuant to sub-paragraph 12(1) must be submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(4) If, during the carrying out of numbered works 1, 2, 3, 5 and 7 contamination not previously identified is found to be present within such area(s) no further development (unless otherwise agreed in writing with the relevant planning authority) must be carried out on the area(s) on which the contamination has been found until a remediation strategy detailing how such contamination must

be dealt with has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(5) No piling works comprised in the numbered works 1, 2 and 3 must commence until a piling risk assessment has been submitted to and approved by the Environment Agency.

(6) The piling risk assessment approved by the Environment Agency under sub-paragraph (5) must be provided to the relevant planning authority before commencement of numbered works 1, 2 and 3.

(7) The authorised development must be carried out in accordance with the strategy approved pursuant to sub-paragraph (1), any remediation strategy approved pursuant to sub-paragraph (4), and the piling risk assessment approved pursuant to sub-paragraph (5).

Archaeology

13.—(1) Each of numbered works 5, 6 and 8 of the authorised development must not commence (including permitted preliminary works comprising intrusive archaeological surveys only) until either—

- (a) a written scheme of investigation has, for that numbered work, been submitted to and approved by the relevant planning authority; or
- (b) the relevant planning authority has confirmed that no written scheme of investigation is required for that numbered work.

(2) Any scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with items H2, H3, H4, H5 and H6 of the register of environmental actions and commitments.

(3) Any scheme submitted and approved pursuant to sub-paragraph (1) must—

- (a) identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified;
- (b) provide details of the measures to be taken to protect, record or preserve any significant archaeological features that may be found; and
- (c) provide details of archaeological monitoring to be undertaken during construction.

(4) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

- (a) in accordance with the approved scheme; and
- (b) by a suitably qualified person or organisation approved by the relevant planning authority.

Construction environmental management plan

14.—(1) No part of the authorised development is to commence (including permitted preliminary works comprising geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, demolition of buildings and removal of plant and machinery, above ground site preparation for temporary facilities for the use of contractors, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, and site clearance (including vegetation removal, demolition of existing buildings and structures) only), until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority, after consultation with the Environment Agency.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the register of environmental actions and commitments.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan.

Construction traffic management plan

15.—(1) No part of numbered works 1, 2, 3 and 8 of the authorised development is to commence, until a construction traffic management plan has, for that part, been submitted to and, after consultation with National Highways and the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the relevant part of the outline construction traffic management plan.

(3) Notices must be erected and maintained by the undertaker throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(4) The plan must be implemented and maintained as approved throughout the construction of the authorised development.

Construction worker travel plan

16.—(1) No part of numbered works 1, 2 and 3 of the authorised development is to commence until a construction worker travel plan has, for that part, after consultation with National Highways and the highway authority, been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the relevant part of the framework construction worker travel plan.

(3) The plan must be implemented and maintained as approved throughout the construction of the authorised development.

Control of noise during operation

17.—(1) No part of numbered works 1, 2 or 3 is to commence until a noise mitigation scheme containing details of how the design of that numbered work has ensured that rating noise levels for normal mode of operation predicted at 1m from the façade of noise sensitive receptors as included Table 1 below will not be exceeded for that part, has been submitted to and approved by the relevant planning authority.

(2) The noise mitigation scheme must also include a set of noise limits that must not be exceeded during operation at locations that are 5m from the equipment listed below, such locations to be agreed with the relevant planning authority in the noise mitigation scheme. The equipment referred to in this sub-paragraph are—

- (a) flue gas booster fans;
- (b) carbon dioxide compressor buildings;
- (c) pumps; and
- (d) combined power turbine buildings.

(3) The noise mitigation scheme must be implemented and maintained as approved pursuant to sub-paragraph (1).

Table 1

Operational Rating Noise Limits

(1) <i>Receptor</i>	(2) <i>Easting</i>	(3) <i>Northing</i>	(3) <i>Rating Level, LAR, Tr dB</i>
R1, Wren Hall	467273.9	427168.2	30
R2, Long Drax	468163.8	428107.5	25
R3, Old Lodge	467515.8	428113.3	24
R4, Drax Abbey Farm	467042.9	428281.2	26
R5, Foreman's Cottage	466842.8	428479.7	26

R6, 2 Forest Grove Barlow	465213.8	428417.7	34
R7, Brigg Lane	465054.1	426248.0	33
R8, Station Cottage	466671.9	426399.0	23
R9, Briden Bungalow	467759.4	426857.7	27
R10, Weston House	466922.8	426331.1	24
R11, Rose Cottage	468427.5	426135.4	24
R12, Brigg Farm Court	465207.2	426066.8	24
R13, Camela House	464868.2	426604.7	36
R14, Low Farm	464211.5	427351.1	35

Decommissioning environmental management plan

18.—(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its approval, after consultation with the Environment Agency, a decommissioning environmental management plan for that part.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan submitted under sub-paragraph (1) in relation to such works.

(3) The plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and
- (f) a timetable for the implementation of the scheme.

(4) The measures set out in the plan submitted under paragraph (1) must be consistent with the principles informing the measures that are set out in the register of environmental actions and commitments.

(5) The plan must be implemented and maintained as approved for the duration of the decommissioning of the authorised development.

Decommissioning traffic management plan

19.—(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its approval, after consultation with National Highways and the highway authority, a decommissioning traffic management plan for that part.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan submitted under sub-paragraph (1) in relation to such works.

(3) The plan submitted and approved must include details of—

- (a) route diversions; and
- (b) routing of abnormal loads and HGVs.

(4) The measures set out in the plan submitted under paragraph (1) must be consistent with the principles informing the measures that are set out in the register of environmental actions and commitments.

(5) The plan must be implemented and maintained as approved for the duration of the decommissioning of the authorised development.

Local liaison committee

20.—(1) The authorised development (save for numbered work 8) must not commence (including permitted preliminary works) until the undertaker has established a committee to liaise with local residents and organisations about matters relating to the construction, operation and decommissioning of the authorised development (a ‘local liaison committee’).

(2) The undertaker must invite the relevant planning authority and local parish councils, to nominate representatives to join the local liaison committee.

(3) The undertaker must supply an appropriate venue for the local liaison committee meetings to take place.

(4) The local liaison committee must—

- (a) include representatives of the undertaker;
- (b) meet quarterly during the construction, operation and decommissioning of the authorised development, starting within one month of commencement, unless otherwise agreed by the majority of the members of the local liaison committee.

(5) For the purposes of sub-paragraph (2) the local parish councils are Airmyn Parish Council, Barby with Osgodby Parish Council, Barlow Parish Council, Brayton Parish Council, Bubwith Parish Council, Camblesforth Parish Council, Carlton Parish Council, Cliffe Parish Council, Drax Parish Council, Gowdall Parish Council, Hemingbrough Parish Council, Long Drax Parish Council, Newlands Parish Council, Rawcliffe Parish Council, Selby South Town Council, Selby East Town Council, Snaith and Cowick Town Council and Wressle Parish Council, unless otherwise agreed in writing by the undertaker and the relevant planning authority.

Local employment plan

21.—(1) No part of the authorised development (save for numbered work 8) is to commence (including permitted preliminary works) until a local employment plan has been submitted to, and approved in writing by, the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the outline local employment plan.

(3) The plan must be implemented and maintained as approved throughout the construction, operation and decommissioning of the authorised development.

LEGISLATION TO BE DISAPPLIED

1. The following provisions do not apply in so far as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development—

- (a) Great Central Railway Act 1910(a);
- (b) Doncaster Area Drainage Act 1929(b); and
- (c) Local Government Board's Provisional Orders Confirmation (Gas) Act 1891(c).

(a) 1910 c.xliii.
(b) 1929 c.xvii.
(c) 1891 c.cviii.

SCHEDULE 4

Article 9

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
In the District of East Riding of Yorkshire	A465	Works in the street to remove overhead power line and replace or underground it between the points marked I and J on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 Rawcliffe Road	Works in the street to remove overhead telecommunications line and replace it with one telecommunications line installed at an increased height above ground level between the points marked K and L on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 Rawcliffe Road	Works in the street to remove overhead power line and underground it between the points marked M and N on sheet 5 of the access and rights of way plans

SCHEDULE 5

Articles 10, 11

ALTERATION OF STREETS

PART 1

TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the District of The North Yorkshire Council	A465	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked E and F on sheet 2 of the access and rights of way plans
In the District of The North Yorkshire Council	A465 roundabout	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked G and H on sheet 2 of the access and rights of way plans
In the District of East Riding of Yorkshire / the District of The North Yorkshire Council	A465	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked H and J on sheets 2, 3 and 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 / A465 roundabout	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked J and K on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked M and N on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	Rawcliffe Road	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked N and O on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	M62 carriageway	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked P and Q on sheet 5 of the access and rights of way plans

In the District of East Riding of Yorkshire	M62 carriageway	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked Q and S on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	M62 carriageway	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked O and R on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	M62 carriageway	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked R and S on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	M62 carriageway	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked R and T on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 / Rawcliffe Road roundabout	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked O and P on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked S and T on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked T and U on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	Elite Road	Works in the street to remove, modify and replace street furniture on the south side of Elite Road between the points marked SS and TT on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	Tom Pudding Way / A161 roundabout	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked U and V on sheet 6 of the access and rights of way plans

In the District of East Riding of Yorkshire	Anderson Way / Tom Pudding Way	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked V and W on sheets 5 and 6 of the access and rights of way plans
In the District of East Riding of Yorkshire	Normandy Way / Anderson Road	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked W and X on sheet 6 of the access and rights of way plans
In the District of East Riding of Yorkshire	Normandy Way	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked X and Y on sheet 6 of the access and rights of way plans
In the District of East Riding of Yorkshire	Bridge Street / Normandy Way	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked Y and Z on sheet 6 of the access and rights of way plans
In the District of East Riding of Yorkshire	Bridge Street	Works in the street to remove, modify and restore street furniture (and gate) and trim vegetation between the points marked CC and DD on sheet 6 of the access and rights of way plans.

PART 2

PERMANENT ALTERATION OF LAYOUT

<i>(1)</i> Area	<i>(2)</i> Streets subject to alteration of layout	<i>(3)</i> Description of alteration
In the District of East Riding of Yorkshire	A465	Works to alter an existing private means of access to create a new permanent means of access on the east side of the A645 within the area shaded orange between the points marked II and JJ on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 Rawcliffe Road	Works for the provision a new private means of access on the south side of the A614 Rawcliffe Road within the area shaded orange between the points marked LL and KK on sheet 4 of the access and rights of way plans

In the District of East Riding
of Yorkshire

A614 Rawcliffe Road

Works to alter an existing
private means of access to
create a new permanent means
of access on the south side of
the A614 Rawcliffe Road
within the area shaded orange
between the points marked OO
and PP on sheet 5 of the access
and rights of way plans

SCHEDULE 6

Article 12

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Description of temporary closure etc.</i>
In the District of The North Yorkshire Council	Public footpath 35.6/6/1	Between the points marked AA and BB on sheet 2 of the access and rights of way plans
In the District of East Riding of Yorkshire	Public footpath AIRMF03	Between the points marked II and QQ on sheet 4 of the access and rights of way plans

SCHEDULE 7
ACCESS TO WORKS

Article 13

PART 1

TEMPORARY MEANS OF ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of The North Yorkshire Council	New Road	The temporary construction access on the north side of the A645 between the points marked E and F on sheet 2 of the access and rights of way plans
In the District of The North Yorkshire Council	New Road	The temporary construction access on the east side of New Road between the points marked A and B on sheets 1 and 2 of the access and rights of way plans
In the District of The North Yorkshire Council	New Road	The temporary construction access on the east side of New Road between the points marked C and D on sheet 2 of the access and rights of way plans

PART 2

PERMANENT MEANS OF ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of East Riding of Yorkshire	A645	Works to alter an existing private means of access to create a new permanent means of access on the east side of the A645 within the area shaded orange between the points marked II and JJ on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 Rawcliffe Road	Works to alter an existing private means of access to create a new permanent means of access on the south side of the A614 Rawcliffe Road within the area shaded orange between the points marked LL and KK on sheet 4 of the access and rights of way plans

In the District of East Riding of Yorkshire	A614 Rawcliffe Road	The construction of a new permanent means of access on the north side of the A614 Rawcliffe Road within the area shaded orange between the points marked MM and NN on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 Rawcliffe Road	Works to alter an existing private means of access to create a new permanent means of access on the south side of the A614 Rawcliffe Road within the area shaded orange between the points marked OO and PP on sheet 5 of the access and rights of way plans

SCHEDULE 8

Articles 20, 21

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED OR IN WHICH RIGHTS MAY BE EXTINGUISHED

PART 1

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

1. In this Schedule—

“Work No. 1F and 3 infrastructure” means any works or development comprised within Work Nos. 1F and 3, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work Nos. 1F and 3 on the works plans;

“Work No. 6 planting” means the soft landscaping including planting, landscape and biodiversity enhancement measures and security fencing, gates, boundary treatment and other means of enclosure to be provided on the habitat provision area and comprised within Work No. 6, including any other necessary works or development permitted in respect of such habitat provision area within the area delineated as Work No. 6 on the works plans;

“Work No. 8A infrastructure” means any works or development comprised within Work No. 8A infrastructure, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No.8A on the works plans; and

“Work No. 8B infrastructure” means any works or development comprised within Work No 8B infrastructure, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No.8B on the works plans.

<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
01-20, 01-21, 01-22, 01-23, 01-25	For and in connection with the Work No. 1F and 3 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1F and 3 infrastructure, together with the right to install, retain, use and maintain the Work No. 1F and 3 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 1F and 3 infrastructure, or interfere with or obstruct access from and to the Work No. 1F and 3 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
01-01, 01-02, 01-03, 01-04, 01-05, 01-06, 01-07, 01-08, 01-09, 01-10, 01-11, 01-12, 01-13	For and in connection with the Work No. 6 planting, the right to create or improve accesses and a right for the undertaker and all persons

	<p>authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 6 planting, together with the right to retain, maintain, inspect and replant the Work No. 6 planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 planting, or interfere with or obstruct access from and to the Work No. 6 planting.</p>
01-45, 01-61, 01-66, 01-70, 01-72, 01-74	<p>For and in connection with the Work No. 8A infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8A infrastructure together with the right to install, retain, use and maintain the Work No. 8A infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8A infrastructure, or interfere with or obstruct access from and to the Work No. 8A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
01-52, 01-53, 01-54, 01-55	<p>For and in connection with the Work No. 8A infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8A infrastructure.</p>
01-76, 01-85, 01-86, 01-87, 01-92, 01-93, 01-121, 01-122	<p>For and in connection with the Work No. 8B infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8B infrastructure together with the right to install, retain, use and maintain the Work No. 8B infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8B infrastructure, or interfere with or obstruct access from and to the Work No. 8B</p>

	infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
01-96, 01-106, 01-108, 01-115, 01-118	For and in connection with the Work No. 8A infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8A infrastructure together with the right to install, retain, use and maintain the Work No. 8A infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8A infrastructure, or interfere with or obstruct access from and to the Work No. 8A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

PART 2

LAND IN WHICH RIGHTS MAY BE EXTINGUISHED

<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be extinguished</i>
01-17	Extinguishment of existing rights in order to facilitate construction and operation of Work Nos. 2, 3, 4, 5 and 6
01-18	Extinguishment of existing rights in order to facilitate construction and operation of Work Nos. 2, 3, 4 and 5
01-19	Extinguishment of existing rights in order to facilitate construction and operation of Work Nos. 1, 2, 3, 4, 5 and 6
01-24	Extinguishment of existing rights in order to facilitate construction and operation of Work Nos. 1F, 3, 4 and 5
01-78, 01-80, 01-90	Extinguishment of existing rights relating to existing telecommunications apparatus

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

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right 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 limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

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

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

(2) In section 5A(5A) (relevant valuation date), omit the words after “if—” and substitute—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 to the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 to the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

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

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as modified by article 24 (modification of Part 1 of the Compulsory Purchase Act 1965), applies to the compulsory acquisition of a right by the creation of a new right under article 20 (compulsory acquisition of rights)—

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

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

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

(a) 1973 c.26.

(b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

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

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

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

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

(5) Section 11 (powers of entry)(**a**) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section, 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 11A (powers of entry: further notices of entry)(**b**), 11B (counter-notice requiring possession to be taken on specified date)(**c**), 12 (penalty for unauthorised entry)(**d**) and 13 (refusal to give possession to acquiring authority)(**e**) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.)(**f**) of the 1965 Act 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 it actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 24(4) (modification of Part 1 of the Compulsory Purchase Act 1965) 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 or restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c.22) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
 - (c) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c.23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c.15).
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c.34) and S.I. 2009/1307.

SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 22 (application of the 1981 Act) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202* in respect of the land to which the notice to treat relates.

(2) But see article 23 (acquisition of subsoil only) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202* which excludes the acquisition of subsoil only from this Schedule.

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

Counter-notice requiring purchase of land

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

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

Response to counter-notice

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

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

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

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

8. If the authority 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 authority 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 the Upper Tribunal

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

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

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

- (a) the effect of the acquisition of the right or the imposition of the covenant,

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

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

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

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

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

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

SCHEDULE 10

Article 26

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Plot reference number shown on the land plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>
01-16	Temporary use for works to facilitate construction access (Work No. 4) Temporary use as construction laydown area (Work No. 5)
01-27	Temporary use for works to facilitate construction access (Work No. 4)
01-43, 01-48, 01-60, 01-62, 01-63, 01-67, 01-68, 01-71, 01-73, 01-75	Temporary use to undertake Work No.8A including construction laydown and construction access
01-77, 01-79, 01-81, 01-82, 01-83, 01-88, 01-89, 01-91, 01-94, 01-119, 01-120	Temporary use to undertake Work No.8B including construction laydown and construction access
01-97, 01-98, 01-102, 01-103, 01-110, 01-112, 01-116, 01-123, 01-124, 01-125	Temporary use to undertake Work No.8A including construction laydown and construction access

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation**1.** In this Schedule—

“application” means an application for any consent, agreement or approval required by a requirement whether or not the application seeks to discharge a requirement in whole or in part;

“requirement consultee” means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and

“start date” means the date of the notification given by the Secretary of State under paragraph 5(2)(b).

Applications made under requirement

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph (3); or
- (c) such longer period that is agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 5, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(5) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement confirming whether it is likely that the subject matter of the application, including any mitigation measures, will give rise to a change in the conclusions of the habitat regulations assessment and if it will then it must be accompanied by information setting out what those changes are.

(6) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine that application within the period set out in sub-paragraph (1) and is accompanied by a report pursuant to sub-paragraph (5) which states that the subject matter of such application, including any mitigation measures, will give rise to a change in the conclusions of the habitat regulations assessment then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 21 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five working days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within five working days of receipt of such a request and in any event within 21 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in subparagraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2 and paragraph 3.

Fees

4.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012^(a) (as may be amended or replaced from time to time) is to apply and must be paid to that authority for each application.

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

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within eight weeks from the relevant date in paragraph 2 unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2(1)(c) of this Schedule.

Appeals

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

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(3);
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(a) S.I. 2012/2920 as amended by S.I. 2013/2153, S.I. 2014/357 and S.I. 2014/2026.

- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;
- (b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;
- (c) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the undertaker must make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-paragraph (c);
- (e) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and
- (f) the appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in sub-paragraphs (2)(c) to (2)(e) of sub-paragraph (2) apply.

(5) The appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to them 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 relevant time limits.

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

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless 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 to be deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

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

(11) Either the relevant planning authority or the undertaker may request that the appointed person to 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 advice on planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

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

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

“utility undertaker” means—

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

(a) 1989 c.29.

(b) 1991 c.56.

(c) 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).

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; and

“Yorkshire Water” means Yorkshire Water Services Limited (company no. 02366682) whose registered office is at Western House, Halifax Road, Bradford, West Yorkshire, BD6 2SZ.

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

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary closure of public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

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

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

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

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

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

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

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 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 executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

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

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

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

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

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 41 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

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

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

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

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

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

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

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

12. Where the execution of works is required pursuant to paragraphs 6 or 8 of this Part of this Schedule with respect to apparatus belonging to or maintained by Yorkshire Water, such works must be undertaken in compliance with Yorkshire Water’s “Protection of Mains and Services Policy” (provided by Yorkshire Water to the undertaker by letter dated 5 May 2023).

PART 2
FOR THE PROTECTION OF OPERATORS OF ELECTRONIC
COMMUNICATIONS CODE NETWORKS

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

(2) In this Part of this Schedule—

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

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

“the electronic communications code” has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

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

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

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

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

14. The exercise of the powers of article 28 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

15.—(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.

(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 40 (procedure in relation to certain approvals etc.).

16. This Part of this Schedule does not apply to—

(a) 2003 c.21.

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

17. 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.

18. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent access to the Airwaves Solutions Limited telecommunications site located 2.68 metres from the Order limits by Airwaves Solutions Limited, its employees, contractors or sub-contractors, such access to be over plot 9-06.

PART 3

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

19. For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

20. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid; together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” has the same meaning as in article 2 (interpretation) of this Order except for the purposes of paragraph 26 this Part of this Schedule where it shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

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

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

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

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

“Incentive Deduction” means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid; construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“NGESO” means as defined in the STC;

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

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

“specified works” means any of the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 25(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 25(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”;

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“STC Claims” means any claim made under the STC against National Grid Electricity Transmission plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission plc’s transmission system which arises as a result of the authorised works;

“Transmission Owner” means as defined in the STC;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

On Street Apparatus

21. Except for paragraphs 22 (apparatus of National Grid in stopped up streets), 27 (retained apparatus: protection), 28 (expenses) and 29 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Part of this Schedule do not apply to

apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid in stopped up streets

22.—(1) Where any street is stopped up under article 9 (street works), article 10 (power to alter layout, etc, of streets), article 11 (construction and maintenance of altered streets), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 25 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 27

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (temporary closure of public rights of way), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

23.—(1) The undertaker, in the case of the powers conferred by article 33 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Acquisition of land

24.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not;

- (a) appropriate or acquire or take temporary possession of any land or apparatus; or
- (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraphs 27 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

25.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 26(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

26.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and

rights are subject the matter may be referred to arbitration in accordance with paragraph 33 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

27.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of

securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 19 to 21 and 24 to 26 apply as if the removal of the apparatus had been required by the undertaker under paragraph 25(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of works for which a plan has been approved pursuant to sub-paragraph (4), a new plan for such works, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

28.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any works referred to in paragraphs 26(2) and (3) including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 25(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

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

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 33 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) 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 will be treated as if it also had been agreed or had been so determined.

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

(6) Where reasonably anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by National Grid are less than the amount already paid by the undertaker National Grid will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

29.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which

is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid.

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

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section (b) will be subject to the full terms of this Part of this Schedule including this paragraph 29; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid’s control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

30. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

31.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 25(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 27, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid’s consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

32. If in consequence of the agreement reached in accordance with paragraph 24(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

33. Save for differences or disputes arising under paragraphs 25(2), 25(4), 26(1) and 27 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 41 (arbitration).

Notices

34. Notwithstanding article 39 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 27 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.

35.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 shall continue to apply in respect of the exercise of all National Highways’ statutory functions.

Interpretation

36.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with subparagraph (2) the latter prevail.

(2) In this Part of this Schedule—

“as built information” means one electronic copy of the following information—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys if required to comply with DMRB standards;
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's *Asset Data Management Manual* as is in operation at the relevant time.

“the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;

“the cash surety” means the sum agreed between the undertaker and National Highways;

“commuted sum” means such sum calculated as provided for in paragraph 43 of this Part of this Schedule to be used to fund the future cost of maintaining the specified works;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the development—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) regime of California Bearing Ratio testing;
- (k) electrical work for road lighting, traffic signs and signals;

- (l) motorway communications as required by DMRB;
- (m) highway structures and any required structural approval in principle;
- (n) landscaping;
- (o) proposed departures from DMRB standards;
- (p) walking, cycling and horse riding assessment and review report;
- (q) stage 1 and stage 2 road safety audits and exceptions agreed;
- (r) utilities diversions;
- (s) topographical survey;
- (t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (u) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (v) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

“DBFO contract” means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 43;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“highway operations and maintenance contractor” means the contractor appointed by National Highways under the DBFO contract;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 41 when it considers the specified works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

“specified works” means so much of any work, including highway works and signalisation, authorised by this Order, including any maintenance of that work, as is on, in, under or over the strategic road network for which National Highways is the highway authority;

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice.

(3) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

General

37. In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of this Schedule but for the purposes of any approvals required under this Part of this Schedule the undertaker shall liaise directly with National Highways.

38. Notwithstanding the limits of deviation permitted pursuant to article 3 (development consent etc. granted by this Order) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under or over the strategic road network at a distance within 4 metres of the lowest point of the ground.

39. References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

40. If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals and security

41.—(1) The specified works must not commence until:

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works has been approved by National Highways;
- (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways:
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);
 - (ii) details of the proposed road space bookings;
 - (iii) the identity and suitability of the contractor and nominated persons;

- (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
 - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding; and
- (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
 - (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;
 - (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
 - (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
 - (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
 - (i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
 - (j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.
- (2) The undertaker must not exercise—
- (a) article 4 (maintenance of authorised development);
 - (b) article 9 (street works);
 - (c) article 10 (power to alter layout, etc., of streets);
 - (d) article 12 (temporary closure of public rights of way);
 - (e) article 13 (access to works);
 - (f) article 15 (discharge of water);
 - (g) article 16 (authority to survey and investigate land);
 - (h) article 20 (compulsory acquisition of rights);
 - (i) article 21 (private rights);
 - (j) article 23 (acquisition of subsoil only);
 - (k) article 27 (temporary use of land for maintaining the authorised development);
 - (l) article 32 (felling or lopping of trees and removal of hedgerows);
 - (m) article 33 (protective works to building);

over any part of the strategic road network without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval.

(3) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1) or (2).

(4) Any approval of National Highways required under this paragraph—

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) shall be deemed to have been refused if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways within 2 months of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with sub-paragraph (1) of this Part.

Construction of the specified works

42.—(1) The undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 41(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.

(4) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.

(5) If any part of the specified works is constructed—

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways.

(6) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(7) If within 28 days on which a notice under sub-paragraph (5) or sub-paragraph (6) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(8) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

(9) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.

(10) During the construction of the specified works the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 41(1)(h) and the undertaker must carry out such maintenance at its own cost.

(11) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 41(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

43.—(1) The undertaker must pay to National Highways a sum equal to the whole of any costs and expenses which National Highways incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 41(1);
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land required for the specified works;
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and
- (f) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the

NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 44(4).

(6) Within 28 days of the issue of the final account:

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

44.—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways prior to reopening the strategic road network.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable:

- (a) inspect the specified works; and
- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

- (a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;
- (b) the specified works incorporating the approved remedial works under sub-paragraph (a) and any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the satisfaction of National Highways;
- (c) the as built information has been provided to National Highways; and
- (d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

(6) The undertaker must submit a stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Opening

45. The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date.

Final condition survey

46.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 44(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to sub-paragraph (1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to sub-paragraph (1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

Defects Period

47.—(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);
- (b) in respect of matters which National Highways considers to be serious defects or faults within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the expiry of the defects period National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

48.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable:

- (a) inspect the strategic road network; and

- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.
- (3) The undertaker must carry out such works notified to it pursuant to sub-paragraph (2).
- (4) When National Highways is satisfied that:
- (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph (2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and
 - (b) the NH costs have been paid to National Highways in full;
- National Highways must issue the final certificate after which the bond shall be released in full.
- (5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

Security

49.—(1) The specified works must not commence until—

- (a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and
- (b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 43 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.

Commutated sums

50.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

Insurance

51. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

52. The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

53.—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 45 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

54.—(1) Following the issue of the final certificate pursuant to paragraph 48(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

(3) The undertaker must not under the powers of this Order:

- (a) acquire or use land forming part of;
- (b) acquire new or existing rights over; or
- (c) seek to impose or extinguish any restrictive covenants over;

any of the strategic road network, or extinguish any existing rights of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk.

(4) Where any land or interest is proposed to be acquired for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article 20 (compulsory acquisition of rights) as applied by article 24 (modification of Part 1 of the Compulsory Purchase Act 1965) and article 22 (application of the 1981 Act) of this Order to directly vest in National Highways any such land or interest.

Expert Determination

55.—(1) Article 41 (arbitration) of this Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 41 (arbitration).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

SCHEDULE 13

Article 38

DOCUMENTS AND PLANS TO BE CERTIFIED

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>
access and rights of way plans	2.4	P04	April 2023
book of reference	4.3	Rev 10	July 2023
crown land plan	2.6	P02	April 2023
draft lighting strategy	6.7	Rev 02	May 2023
environmental statement	Volume 1 (6.1) Chapters (excluding chapter 18)	Rev 01	May 2022
	Volume 1 (6.1) (chapter 18)	Rev 03	March 2023
	Volume 2 (6.2) Figures (excluding figures 6.1, 7.1, 7.3, 10.1 and 18.1)	Rev 01	May 2022
	Volume 2 (6.2) Figures (figures 6.1, 7.1, 7.3, 10.1)	Rev 02	February 2023
	Volume 2 (6.2) Figures (figure 18.1)	Rev 03	March 2023
	Volume 3 (6.3) Appendices (excluding appendices 5.1, 5.2, 6.4, 6.5, 7.5, 11.2, 12.1, 12.3, 18.1, 18.2, 18.4 and 18.5)	Rev 01	May 2022
	Volume 3 (6.3) Appendices (appendices 7.5, 11.2 and 12.3)	Rev 02	February 2023
	Volume 3 (6.3) Appendices (appendices 18.1, 18.4 and 18.5)	Rev 03	March 2023
	Volume 3 (6.3) Appendices (appendix 18.2)	Rev 04	March 2023
	Volume 3 (6.3) Appendices (appendix 5.1)	Rev 05	February 2023
Volume 3 (6.3) Appendices (appendices 5.2, 6.4 and 12.1)	Rev 03	February 2023	
Volume 3 (6.3) Appendices (appendix 6.5)	Rev 05	July 2023	
Volume 4 (6.4) Non-Technical Summary	Rev 01		May 2022
flood risk assessment	6.3.12.1 (ES Appendix 12.1)	Rev 03	February 2023

framework construction worker travel plan	6.3.5.2 (ES Appendix 5.2)	Rev 03	February 2023
habitat regulations assessment			
volume 1 – main text	6.8.1	Rev 04	July 2023
volume 2 – figure 1: European sites within air quality study area	6.8.2.1	Rev 01	May 2022
volume 2 – figure 2: European sites within 5km	6.8.2.2	Rev 01	May 2022
volume 2 – figure 3: functionality-linked land	6.8.2.3	Rev 01	May 2022
volume 3 – appendix 1: European site citations	6.8.3.1	Rev 01	May 2022
volume 3 – appendix 2: European site conservation objectives	6.8.3.2	Rev 01	May 2022
volume 3 – appendix 3: screening matrices	6.8.3.3	Rev 03	May 2023
volume 3 – appendix 4: adverse effect matrices	6.8.3.4	Rev 03	May 2023
volume 3 – appendix 5: air quality sensitivity of European sites in the Zol	6.8.3.5	Rev 01	May 2022
volume 3 – appendix 6: Drax nitrate / phosphate nutrient limitation note	6.8.3.6	Rev 01	May 2022
volume 3 – appendix 7: SAC habitat monitoring	6.8.3.7	Rev 02	February 2023
volume 3 – appendix 8: Lower Derwent Valley note on habitats and soils	6.8.3.8	Rev 01	March 2023
land plans	2.2	P03	April 2023

outline construction traffic management plan	6.3.5.1 (ES Appendix 5.1)	Rev 05	February 2023
outline local employment plan	8.12	Rev 01	March 2023
outline landscape and biodiversity strategy – volume 1 – main text	6.6.1	Rev 05	May 2023
volume 2 – figure 1: landscape and mitigation plan	6.6.2.1	Rev 01	May 2022
volume 2 – figure 2: off-site habitats provision area	6.6.2.2	Rev 01	May 2022
volume 2 – figure 3: existing retained vegetation	6.6.2.3	Rev 01	May 2022
figure 3 – FCA landscape and biodiversity plan	8.5.2.3	Rev 01	December 2022
figure 4 – OHL landscape and biodiversity plan	8.5.2.4	Rev 03	April 2023
proposed surface water drainage strategy	6.3.12.3 (ES Appendix 12.3)	Rev 02	February 2023
register of environmental actions and commitments	6.5	Rev 11	July 2023
works plans	2.3	P04	April 2023

SCHEDULE 14

Requirement 6

DESIGN PARAMETERS

PART 1

DESIGN PARAMETERS ASSOCIATED WITH THE CARBON CAPTURE PLANT FOR UNIT 1

(1) <i>Component / Building / Area</i>	(2) <i>Work No.</i>	(3) <i>Maximum number</i>	(4) <i>Maximum length (m)</i>	(5) <i>Maximum width (m)</i>	(6) <i>Maximum height (m AGL)</i>	(7) <i>Maximum height (m AOD)</i>
Gas / Gas Heat Exchanger ⁽¹⁾	1D(v)(aa)	2	25	25	45	51.1
Quench Column	1D(i)(aa)	1	50	30	40	46.1
Absorber Column	1D(i)(bb)	1	50	30	95	101.1
Regenerator	1D(iii)(aa)	2	15	15	70	76.1
Carbon Dioxide Gas Compressor Building	1E(i)	4	45	40	30	36.1
Carbon Dioxide Main Vent Stacks	1E(iii)	1	10	10	30	36.1
Main Process & Service Rack ^{(2) (3)}	1D(iii)	1	150	20	25	31.1

⁽¹⁾ Component to be located at elevation (i.e. located within the duct). Height stated is the maximum height component could be AGL.

⁽²⁾ Buildings / Structures may be coupled together. Total building volume will however not exceed volume required for maximum number of buildings. Maximum height stated is for all configurations. Switchrooms may also be doubled stacked.

⁽³⁾ The Rich Solvent / Lean Solvent Heat Exchangers would be located at elevation on the Main Process and Service Rack.

PART 2

DESIGN PARAMETERS ASSOCIATED WITH THE CARBON CAPTURE PLANT FOR UNIT 2

<i>(1)</i> <i>Component / Building / Area</i>	<i>(2)</i> <i>Work No.</i>	<i>(3)</i> <i>Maximum number</i>	<i>(4)</i> <i>Maximum length (m)</i>	<i>(5)</i> <i>Maximum width (m)</i>	<i>(6)</i> <i>Maximum height (m AGL)</i>	<i>(7)</i> <i>Maximum height (m AOD)</i>
Gas / Gas Heat Exchanger ⁽¹⁾	1D(vi)(aa)	2	25	25	45	51.1
Quench Column	1D(ii)(aa)	1	50	30	40	46.1
Absorber Column	1D(ii)(bb)	1	50	30	95	101.1
Regenerator	1D(iv)(aa)	2	15	15	70	76.1
Carbon Dioxide Gas Compressor Building	1E(ii)	4	45	40	30	36.1
Carbon Dioxide Main Vent Stacks	1E(iv)	1	10	10	30	36.1
Main Process & Service Rack ^{(2) (3)}	1D(iv)	1	150	20	25	31.1

⁽¹⁾ Component to be located at elevation (i.e. located within the duct). Height stated is the maximum height component could be AGL.

⁽²⁾ Building / Structures may be coupled together. Total building volume will however not exceed volume required for maximum number of buildings. Maximum height stated is for all configurations. Switchrooms may also be double stacked.

⁽³⁾ The Rich Solvent / Lean Solvent Heat Exchangers would be located at elevation on the Main Process and Service Rack.

PART 3

DESIGN PARAMETERS ASSOCIATED WITH THE COMMON INFRASTRUCTURE REQUIRED FOR BOTH THE CARBON CAPTURE PLANT FOR UNIT 1 AND THE CARBON CAPTURE PLANT FOR UNIT 2

(1) <i>Component / Building / Area</i>	(2) <i>Work No.</i>	(3) <i>Maximum number</i>	(4) <i>Maximum length (m)</i>	(5) <i>Maximum width (m)</i>	(6) <i>Maximum height (m AGL)</i>	(7) <i>Maximum height (m AOD)</i>
Carbon Capture Wastewater Treatment Plant Area	1D(viii)(a)	1	80	70	40	46.1
Solvent Storage and Make-up System Compound	1D(vii)	4	55	45	25	31.1
Combined Power Turbine Building ⁽¹⁾	1C(iii)(bb)	2	50	45	35	41.1
Pressure Reducing De-Superheating Station Building ⁽¹⁾	1C(iii)(dd)	2	15	45	15	21.1
Steam Pipe Bridge Connection (Connection with existing Drax Power Station Infrastructure)	1C(iii)(ee)	1	30	10	65	71.1
Steam Pipe Bridge	1C(iii)(ee)	1	300	20	25	31.1
Fire Water Tanks	1D(viii)(dd)	4	15	15	15	21.1
Switchroom Building ⁽¹⁾	1F	30	30	16	20	26.1
Carbon Dioxide Pipe Bridge	2	1	500	20	20	26.1
Carbon Dioxide Delivery Terminal Compound (onshore carbon pipeline operator)	2	1	100	100	12	18.1

⁽¹⁾ Buildings / Structures may be coupled together. Total building volume will however not exceed volume required for maximum number of buildings. Maximum height stated is for all configurations. Switchrooms may also be double stacked.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Drax Power Limited (referred to in this Order as the undertaker) to construct, operate, maintain and decommission carbon capture plant as an extension to an existing generating station and associated development. This Order would permit the undertaker to acquire, compulsorily or by the agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 38 of this Order (certification of plans and documents, etc) may be inspected free of charge during working hours at The North Yorkshire Council, County Hall, Northallerton, North Yorkshire, DL7 8AD and at Civic Centre, Doncaster Road, Selby, YO8 9FT.