

**202[\*] No. [\*]**

**INFRASTRUCTURE PLANNING**

**The Gate Burton Energy Park Order 202[\*]**

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

*Coming into force* - - - - - \*\*\*

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An application has been made to the Secretary of State for an order granting development consent under section 37 of the Planning Act 2008 (“the 2008 Act”)(a) 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).

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having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74(2)(d) of the 2008 Act made a report and recommendation to the Secretary of State.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(e) and has had regard to the documents and matters referred to in section 105(2)(f) 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(g), 115(h), 120(i), 122(j) and 123(k) of the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### Citation and commencement

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

#### Interpretation

2.—(1) In this Order—

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

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

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

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(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. 2012/635, 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. 2017/524, 2017/572 and S.I. 2018/378.

(c) S.I. 2010/103.

(d) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).

(e) S.I. 2017/572.

(f) Section 105(2) was amended by paragraph 50 of Schedule 13 to the Localism Act 2011.

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

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

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

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

(k) Ibid.

(l) 1961 c. 33.

(m) 1965 c. 56.

(n) 1980 c. 66.

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

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

“the 1989 Act” means the Electricity Act 1989(c);

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

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

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

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

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

“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 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“commence” means beginning to carry out a material operation, as defined in section 56(4) of the 1990 Act(h) (which explains when development begins), comprised in or carried out or 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;

“Cottam undertaker” means the undertaker for the purposes of the [Cottam Solar Project Order 202[\*]];

“Crown land 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 special category land plan for the purposes of this Order;

“date of final commissioning” means in respect of each part of the authorised development as approved under requirement 2 of Schedule 2 (requirements) the date on which each part of the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

“date of decommissioning” means in respect of each part of the authorised development, the date notified under requirement 19 that that part of the authorised development has ceased to generate electricity on a commercial basis;

“electronic transmission” means a communication transmitted—

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

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

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(a) 1981 c. 66.

(b) 1984 c. 27.

(c) 1989 c. 29.

(d) 1990 c. 8.

(e) 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).

(f) 2008 c. 29.

(g) 2009 c. 23.

(h) As amended by paragraph 10(2) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34).

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

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

“framework construction environmental management plan” means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction environmental management plan for the purposes of this Order;

“framework construction traffic management plan” means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction traffic management plan for the purposes of this Order;

“framework decommissioning environmental management plan” means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the framework decommissioning environmental management plan for the purposes of this Order;

“framework operational environmental management plan” means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the framework operational environmental management plan for the purposes of this Order;

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

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

“land 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 land plans for the purposes of this Order;

“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 and “maintenance” and “maintaining” are to be construed accordingly;

“MMO” means the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH;

“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;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by the authorised development shown on the land plans and described in the book of reference;

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

“outline battery safety management plan” means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the outline battery safety management plan for the purposes of this Order;

“outline design principles” means the document of that name identified in the table of Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the outline design principles for the purposes of this Order;

“outline drainage strategy” means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the outline drainage strategy for the purposes of this Order;

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

(b) 2006 c. 46.

“outline landscape and ecological management plan” means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order;

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

“outline skills, supply chain and employment plan” means the plan of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the outline skills, supply chain and employment plan for the purposes of this Order;

“outline soil management plan” means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the outline soil management plan for the purposes of this Order;

“outline waterbodies in a river basin management plan” means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the outline waterbodies in a river basin management plan 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(a);

“permitted preliminary works” means all or any of—

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

“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;

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

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

“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(c);

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(a) 1981 c. 67.

(b) 2003 c. 21.

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

“streets, 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 streets, access and rights of way plans for the purposes of this Order;

“street works” means the works listed in article 8(1) (street works);

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

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

“traffic regulation measures plan” means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the traffic regulation measures plan for the purposes of this Order;

“undertaker” means Gate Burton Energy Park Limited (company number 12660764) and any other person who for the time being has the benefit of this Order in accordance with article 34 (benefit of the Order) or article 35 (consent to transfer the benefit of the Order);

“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;

[“West Burton undertaker” means the undertaker for the purposes of the West Burton Solar Project Order 202[\*];]

“works 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 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 streets, 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, is a reference to the work so designated in that Schedule and a reference to “Work No. [X]” or “numbered work [X]” means numbered works [X]A and [X]B 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

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(a) 2006 c. 46.

(b) 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; and S.I. 1999/1920 and S.I. 2001/1400.

## PART 2

### PRINCIPAL POWERS

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

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

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

#### **Operation of generating station**

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

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

#### **Power to maintain the authorised development**

**5.—**(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.

(3) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement.

#### **Application and modification of statutory provisions**

**6.—**(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 purposes 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) section 32(b) (variation of awards) of the Land Drainage Act 1991;
- (c) the provisions of any byelaws made under section 66(c) (powers to make byelaws) of the Land Drainage Act 1991;
- (d) section 24 (restrictions on abstraction) of the Water Resources Act 1991(d);
- (e) section 25(e) (restrictions on impounding) of the Water Resources Act 1991;
- (f) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the appropriate agency) to the Water Resources Act 1991(a);

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(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 32 was amended by S.I. 2013/755.

(c) 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).

(d) 1991 c. 57. Section 24 was amended by paragraph 8 of Schedule 2 of the Environment Act 1995 (Consequential Amendments) Regulations 1996 (S.I. 1996/593) and paragraph 24(2) of Schedule 4(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations (S.I. 2015/664).

(e) Section 25 was amended by section 25(1), Schedule 9(1) paragraph 1, Part 1 section 2(4) and section 2(5) of the Water Act 2003 (c. 37), amended by Schedule 4(1) paragraph 24(3) Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations (S.I. 2015/664).

- (g) section 118 (consent request for discharge of trade effluent into public sewer) of the Water Industry Act 1991**(b)**;
- (h) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016**(c)**;
- (i) 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
- (j) the provisions of the Neighbourhood Planning Act 2017**(d)** insofar as they relate to the temporary possession of land under articles 29 (temporary use of land for constructing the authorised development) and 30 (temporary use of land for maintaining the authorised development) of this Order.

(2) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967**(e)** any felling comprised in the carrying out of any work or operation required for the purposes of, or in connection with, the construction of the authorised development is deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.

(3) Notwithstanding the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of “development”) of the Community Infrastructure Levy Regulations 2010**(f)** any building comprised in the authorised development is deemed to be—

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

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

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

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

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(a) Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to the 2009 Act and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to, the Environment Act 1995, sections 224, 233 and 321 of and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to the 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(b) 1991 c. 56. Section 118 was amended by sections 2(2)(b) and 5(5)(f) of the Environment Act 1995 (c. 25) and sections 66(2)(a) and (b) of the Environment (Wales) Act 2016 (anaw 3).

(c) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.

(d) 2017 c. 20.

(e) Section 9 was amended by section 4 of, and paragraph 141 of, Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.

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

(g) 1990 c. 43.

(h) 1974 c. 40.

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

## PART 3 STREETS

### **Street works**

**8.**—(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 in the street;
- (d) maintain apparatus in 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**

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

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

**10.**—(1) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the highway or street authority (as relevant) and, unless otherwise agreed by the highway or 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 highway or street authority (as relevant).

(2) Subject to paragraph (3), the temporary alterations to each of the streets specified in Part 2 (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.

(3) Those restoration works carried out pursuant to article 9(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 (4), 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 (2) to (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

## **Temporary stopping up of public rights of way**

**11.**—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily stop up, prohibit the use of, restrict 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 street or 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 stopping up, 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 stop up, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

- (a) the streets specified in column 2 of the table in Part 1 (streets to be temporarily stopped up) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table;
- (b) the public rights of way specified in column 2 of the table in Part 2 (public rights of way to be temporarily stopped up and diverted) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table;
- (c) the public rights of way specified in column 2 of the table in Part 3 (permanent use of motor vehicles on public rights of way) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table;
- (d) the public rights of way specified in column 2 of the table in Part 4 (temporary management of public rights of way) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table; and
- (e) the public rights of way specified in column 2 of the table in Part 5 (temporary use of motor vehicles on public rights of way) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table.

(4) The undertaker must not temporarily stop up, prohibit the use of, authorise the use of, restrict 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 stopped up 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.

### **Use of private roads**

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

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

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

### **Access to works**

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

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Schedule 7 (permanent means of access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of

access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

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

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

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (c) the undertaking in the street of any of the works referred to in article 8 (street works) and article 10(1) (construction and maintenance of altered streets); or
- (d) 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 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.

#### **Traffic regulation measures**

**15.**—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with, the construction of the authorised development, temporarily place traffic signs and signals in the extents of the road specified in column 2 of the table in Schedule 8 (traffic regulation measures) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016<sup>(a)</sup>.

(2) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the construction of the authorised development—

- (a) as to the speed at which vehicles may proceed along any road;
- (b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;
- (c) as to the prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;
- (d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road; and
- (e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011<sup>(b)</sup> when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

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(a) S.I. 2016/362.

(b) S.I. 2011/935.

- (a) consult with the chief officer of police in whose area the road is situated; and
  - (b) obtain the written consent of the traffic authority.
- (5) The undertaker must not exercise the powers in paragraphs (1) or (2) unless it has—
- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
  - (b) not less than 7 days before the provision is to take effect published the undertaker's intention to make the provision in one or more newspaper circulating in the area in which any road to which the provision relates is situated.
- (6) Any provision made under the powers conferred by paragraphs (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) or (2).
- (7) Any provision made by the undertaker under paragraphs (1) or (2)—
- (a) must be made by written instrument in such form as the undertaker considers appropriate;
  - (b) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify specific savings and exemptions to which the provision is subject; and
  - (c) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004<sup>(a)</sup> (road traffic contraventions subject to civil enforcement).

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**16.**—(1) Subject to paragraphs (3), (4) and (8) 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<sup>(b)</sup>.

(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) Where the undertaker discharges water into, or makes any opening into, a watercourse, public sewer or drain belonging to or under the control of a drainage authority (as defined in Part 3 of Schedule 15 (protective provisions)), the provisions of Part 3 of Schedule 15 (protective provisions) apply in substitution for the provisions of paragraphs (3) and (4).

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

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(a) 2004 c. 18.  
(b) 1991 c. 56.

(7) 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(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, 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(b) have the same meaning as in that 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 limits it must remove those human remains from the Order limits, or cause them to be removed, in accordance with the following provisions of this article.

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

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

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to 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 limits may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and 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 cannot 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 limits; or

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(a) S.I. 2016/1154.

(b) 1991 c. 57.

- (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<sup>(a)</sup> is not to apply to a removal carried out in accordance with this article.

### **Protective works to buildings**

**18.—**(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 date of final commissioning.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building 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))—

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<sup>(a)</sup> 1857 c. 81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2 (January 2015: substitution has effect subject to transitional and saving provisions specified in S.I. 2014/2077 Schedule 1 paragraphs 1 and 2).

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

(6) Where a notice is served under paragraph (5)(a), (5)(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 42 (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
- (b) within the period of five years beginning with the date of final commissioning it appears protective works are inadequate to protect the building against damage caused by the construction 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) 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.

(12) 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.

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

**19.—**(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or enter on any land which may be affected by the authorised development or enter on any land 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 or bore holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and groundwater and remove soil and groundwater samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including the digging of trenches; 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, bore holes or trenches.

(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.

(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.

## PART 5

### POWERS OF ACQUISITION

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

**20.**—(1) The undertaker may—

- (a) acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or as is incidental, to it; and
- (b) use any land so acquired for the purpose authorised by this Order or for any other purposes in connection with or ancillary to the undertaking.

(2) This article is subject to paragraph (2) of article 22 (compulsory acquisition of rights) and article 29 (temporary use of land for constructing the authorised development).

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

**21.**—(1) After the end of the period of five 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 24 (application of the 1981 Act).

(2) The authority conferred by article 29 (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**

22.—(1) Subject to paragraph (2) and article 29 (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 any purpose for which that land may be acquired under article 20 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 23 (private rights) and article 31 (statutory undertakers), in the case of the Order land specified in column 1 of Schedule 10 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and benefit of restrictive covenants over that land and the creation and acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column 2 of that 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 11 (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 11 (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 49 (Crown rights).

### **Private rights**

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

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 22 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the right is 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 31 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of the land;
  - (iii) the undertaker's entry onto the land; or
  - (iv) the undertaker's taking temporary possession of the land,
 that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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**

24.—(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(a).

(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 five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Gate Burton Energy Park 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 25(3) (acquisition of subsoil only) of the Gate Burton Energy Park 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 27 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

**25.—**(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) or article 22 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil 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 a cellar, vault, arch or other construction forming part of a house, building or manufactory.

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

**26.—**(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 if it is done in accordance with the terms of this Order, notwithstanding that it involves—

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

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

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(a) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

- (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 land (including the temporary use of land).

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

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

(5) 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).

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

**27.—**(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 the 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 five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Gate Burton Energy Park Order [20\*\*]”.

- (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 21 (time limit for exercise of authority to acquire land compulsorily) of the Gate Burton Energy Park Order [20\*\*]”.

- (5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
- (a) for paragraphs 1(2) and 14(2) substitute—
 

“(2) But see article 25(3) (acquisition of subsoil only) of the Gate Burton Energy Park 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 18 (protective works to buildings), article 29 (temporary use of land for constructing the authorised development) or article 30 (temporary use of land for maintaining the authorised development) of the Gate Burton Energy Park Order 202[\*].”.

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

**28.**—(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**

**29.**—(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 12 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column (2) of that 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 (including means of access), 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 the land referred to in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken; or
- (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(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 or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all 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, debris, 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), Schedule 5 (alteration of streets) or Schedule 7 (permanent means of access to works);
- (d) remove any fencing or boundary treatments installed by the undertaker under this article to replace or enhance existing fencing or boundary treatments; or
- (e) restore the land on which any works have been carried out under paragraph (1)(f) 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 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 (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) 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.

(11) 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 Schedule 10 (land in which only new rights etc. may be acquired); or
- (b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 25 (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 28 (rights under or over streets).

(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**

**30.**—(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 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 date of final commissioning of the part of the authorised development for which temporary possession is required under this article except in relation to landscaping where “the maintenance period” means such period as set out in the landscape and ecological management plan 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**

- 31.** Subject to the provisions of Schedule 15 (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; and
  - (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

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

**32.** Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 8 (street works), article 9 (power to alter layout, etc., of streets), article 10 (construction and maintenance of altered streets) or article 11 (temporary stopping up 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 15 (protective provisions), as if this Order had not been made.

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

**33.—(1)** Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (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) Sub-paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31 (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 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.

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

#### **Benefit of the Order**

**34.—(1)** Subject to article 35 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Sub-paragraph (1) does not apply to Work No. 4C in respect of which the provisions of this Order are for the benefit of the undertaker and National Grid.

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(a) 2003 c. 21.

## Consent to transfer the benefit of the Order

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

(2) Where a transfer or grant has been made references in this Order to the undertaker, except in paragraph (9), are to include references to the transferee or 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 the holder of a licence under section 6 (licences authorising supply etc.) of the 1989 Act;
- (b) the transfer or grant relates to Work No. 4B and the transferee or lessee (as relevant) is the Cottam undertaker [and/or the West Burton undertaker];
- (c) the transferee or lessee is a holding company or subsidiary of the undertaker; or
- (d) the time limits for 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) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the whole or part of the benefit of the provisions of the deemed marine licence.

(5) 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).

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

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (9), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

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

(8) 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.

(9) 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 of landlord and tenant law**

**36.**—(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 the purposes of the 1990 Act**

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

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

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

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

(4) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), remove any 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 publicly 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).

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

**39.**—(1) The undertaker may fell or lop any tree that is subject to a tree preservation order within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

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

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

**40.**—(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.

### **No double recovery**

**41.** Compensation is not payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law.

### **Arbitration**

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

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

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(a) S.I. 1997/1160.

## Protective provisions

43. Schedule 15 (protective provisions) has effect.

## Deemed marine licence

44. The marine licence set out in Schedule 9 (deemed marine licence under the 2009 Act) is deemed to have been issued under Part 4 of the 2009 Act (marine licensing) for the licensable marine activities (as defined in section 66 of the 2009 Act) set out in Part 1, and subject to the conditions set out in Part 2 of the licence.

## Service of notices

45.—(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<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

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

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(a) 1978 c. 30.

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.**

46.—(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 16 (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 16 (procedure for discharge of requirements) and where stated to the contrary if, within six 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 16 (procedure for discharge of requirements) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 15 (protective provisions) or any dispute under article 18(6) (protective work 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 15 (protective provisions).

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

47.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any part of the Order 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) in respect of the exercise of the relevant provision in relation to that part of the Order land; 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) in respect of the exercise of the relevant provision in relation to that part of the Order land.

(2) The provisions are—

- (a) article 20 (compulsory acquisition of land);
- (b) article 22 (compulsory acquisition of rights);
- (c) article 23 (private rights);
- (d) article 28 (rights under or over streets);
- (e) article 29 (temporary use of land for constructing the authorised development);
- (f) article 30 (temporary use of land for maintaining the authorised development); and
- (g) article 31 (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.

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

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

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

**Crown rights**

49.—(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) 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;
- (b) 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
- (c) 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 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	<i>Name</i>
Date	Parliamentary Under Secretary of State Department

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(a) 1981 c. 67.

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

#### 1. In this Schedule—

“balance of solar system (BoSS) plant” means inverters, transformers and switch gear and would be either—

- (a) solar stations being a station comprising centralised inverters, transformers and switch gear with each component for each solar station either—
  - (i) a “solar station” located outside, with a concrete foundation slab or placed on metal skids for each of the inverters and transformers and switch gear; or
  - (ii) housed together within a container sitting on a concrete foundation slab or placed on metal skids; or
- (b) string inverters attached either to mounting structures or a ground mounted frame, switchgear and transformers on a concrete foundation slab or placed on metal skids;

“electrical cables” means—

- (a) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables and optical fibre cables; and
- (b) works associated with cable laying including jointing pits, handstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

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

“inverter” means electrical equipment required to convert direct current power to alternating current;

“mounting structure” means a frame or rack made of galvanised steel, anodised aluminium or other material designed to support the solar panels and mounted on piles driven into the ground, piles rammed into a pre-drilled hole, a pillar attaching to a steel ground screw, or pillars fixed to a concrete foundation;

“solar panel” means a solar photovoltaic panel or module designed to convert solar irradiance to electrical energy;

“substation” means a substation containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation;

“switch gear” means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect and isolate electrical equipment; and

“transformer” means a structure serving to transform electricity to a higher voltage.

2. In the Districts of West Lindsey and Bassetlaw and in the Counties of Lincolnshire and Nottinghamshire a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

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

Work No. 1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—

- (a) solar panels fitted to mounting structures; and
- (b) balance of solar system (BoSS) plant.

and associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No. 2— a battery energy storage system compound including—

- (i) battery energy storage system (BESS) units each comprising an enclosure for BESS electro-chemical components and associated equipment, with the enclosure being of metal façade, joined or close coupled to each other, mounted on a reinforced concrete foundation slab or concrete piles;
- (ii) transformers and associated bunding;
- (iii) inverters, switch gear, power conversion systems (PCS) and ancillary equipment;
- (iv) containers or enclosures housing all or any of Work Nos. 2(ii) and (iii) and ancillary equipment;
- (v) monitoring and control systems housed within the containers or enclosures comprised in Work Nos. 2(i) or (iv) or located separately in its own container or enclosure;
- (vi) heating, ventilation and air conditioning (HVAC) systems either housed on or within each of the containers or enclosures comprised in Work Nos. 2(i), (iv) and (v), attached to the side or top of each of the containers or enclosures, or located separate to but near to each of the containers or enclosures;
- (vii) electrical cables including electrical cables connecting to Work No. 3;
- (viii) fire safety infrastructure including water storage tanks and a shut-off valve for containment of fire water and hard standing to accommodate emergency vehicles; and
- (ix) containers or similar structures to house spare parts and materials required for the day to day operation of the BESS facility.

Work No. 3— development of an onsite substation and associated works including—

- (i) substation, switch room buildings and ancillary equipment including reactive power units;
- (ii) monitoring and control systems for this Work No. 3 and Work Nos. 1 and 2 housed within a control building or located separately in their own containers or control rooms; and
- (iii) 400 kilovolt harmonic filter compound.

Work No. 4— works to lay high voltage electrical cables, access and construction compounds for the electrical cables including—

- (a) Work No. 4A—
  - (i) works to lay electrical cables including one 400 kilovolt cable circuit connecting Work No. 3 and/or Work No.5 to Work No. 4B including tunnelling, boring and drilling works for trenchless crossings;
  - (ii) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, roads, including the laying and construction of drainage infrastructure, signage and information boards; and
  - (iii) construction compounds, including site and welfare offices and areas to store materials and equipment;
- (b) Work No. 4B –
  - (i) works to lay electrical cables including one 400 kilovolt cable circuit connecting Work No. 4A to Work No. 4C including tunnelling, boring and drilling works for trenchless crossings;
  - (ii) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, roads, including the laying and construction of drainage infrastructure, signage and information boards; and

- (iii) construction compounds, including site and welfare offices and areas to store materials and equipment;
- (c) Work No. 4C – electrical engineering works within or around the National Grid Cottam substation including-
  - (i) the laying and terminating of one 400 kilovolt cable circuit;
  - (ii) the installation of one 400 kilovolt generation bay; and
  - (iii) ancillary equipment;

Work No. 5— works including—

- (a) electrical cables, including but not limited to electrical cables connecting Works 1, 2 and 3 to one another and connecting solar panels to one another and the BoSS;
- (b) fencing, gates, boundary treatment and other means of enclosure;
- (c) works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure, and perimeter fencing;
- (d) landscaping and biodiversity mitigation and enhancement measures including planting;
- (e) improvement, maintenance and use of existing private tracks;
- (f) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, and roads, including the laying and construction of drainage infrastructure, signage and information boards;
- (g) laying down of temporary footpath diversions, permissive paths, signage and information boards;
- (h) earthworks;
- (i) sustainable drainage system ponds, runoff outfalls, general drainage and irrigation infrastructure, systems and improvements or extensions to existing drainage and irrigation systems;
- (j) construction compounds, including site and welfare offices and areas to store materials and equipment;
- (k) works to divert and underground existing electrical overhead lines.

Work No. 6— construction compounds including—

- (a) areas of hardstanding;
- (b) car parking;
- (c) site and welfare offices, canteens and workshops;
- (d) area to store materials and equipment;
- (e) storage and waste skips;
- (f) area for download and turning;
- (g) security infrastructure, including cameras, perimeter fencing and lighting;
- (h) site drainage and waste management infrastructure (including sewerage); and
- (i) electricity, water, waste water and telecommunications connections

Work No. 7— office, warehouse and plant storage building comprising—

- (a) offices and welfare facilities;
- (b) storage facilities;
- (c) waste storage within a fenced compound;
- (d) parking areas; and
- (e) a warehouse building for the storage of spare parts, operational plant and vehicles.

Work No. 8— works to facilitate access to Work Nos. 1 to 9 including—

- (a) creation of accesses from the public highway;
- (b) creation of visibility splays; and
- (c) works to widen and surface the public highway and private means of access.

Work No. 9— areas of habitat management including—

- (a) landscape and biodiversity enhancement measures;
- (b) habitat creation and management, including earthworks, landscaping, and the laying and construction of drainage infrastructure; and
- (c) fencing, gates, boundary treatment and other means of enclosure.

In connection with and in addition to Work Nos. 1 to 9 further associated development within the Order limits including—

- (a) works for the provision of fencing and security measures such as CCTV and lighting;
- (b) laying down of internal access tracks;
- (c) ramps, means of access, non-motorised links, footpaths, footways;
- (d) boundary treatments, including means of enclosure;
- (e) bunds, embankments, trenching and swales;
- (f) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure;
- (g) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (h) works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- (i) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- (j) electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to, and works to alter the position of, such services and utilities connections;
- (k) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (l) 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 services and utilities; and works for the protection of buildings and land;
- (m) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (n) tunnelling, boring and drilling works;
- (o) works for the benefit of protection of land affected by the authorised development;
- (p) working sites in connection with the construction of the authorised development and its restoration; and
- (q) other works to mitigate any adverse effects of the construction, maintenance, operation or decommissioning of the authorised development,

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 from those assessed in the environmental statement.

## SCHEDULE 2 REQUIREMENTS

### **Interpretation**

1. In this Schedule—

“relevant planning authorities” means West Lindsey District Council and Bassetlaw District Council, as applicable.

### **Commencement of the authorised development**

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

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

3.—(1) With respect to the documents certified under Article 40 (certification of plans and documents, etc) and any plans, details or schemes which have been approved pursuant to any requirement (together the “Approved Documents, Plans, Details or Schemes”), the undertaker may submit to the relevant planning authority or relevant planning authorities (as applicable) for approval any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the relevant planning authority or relevant planning authorities (as applicable), the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

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

### **Community liaison group**

4.—(1) Prior to the commencement of the authorised development the undertaker must submit to the relevant planning authorities for approval the terms of reference for a community liaison group whose aim is to facilitate liaison between representatives of people living in the vicinity of the Order limits and other relevant organisations in relation to the construction of the authorised development.

(2) The community liaison group must be established prior to commencement of the authorised development and must be administered by the undertaker, and operated, in accordance with the approved terms of reference.

(3) The community liaison group is to continue to meet until the date of final commissioning of the final part of the authorised development unless otherwise agreed with the relevant planning authorities.

### **Detailed design approval**

5.—(1) No part of the authorised development may commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance;

- (e) hard surfacing materials;
- (f) vehicular and pedestrian access, parking and circulation areas;
- (g) refuse or other storage units, signs and lighting;
- (h) drainage, water, power and communications cables and pipelines;
- (i) programme for landscaping works

relating to that part have been submitted and approved in writing by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

- (2) The details submitted must accord with the outline design principles.
- (3) The authorised development must be carried out in accordance with the approved details.

### **Battery safety management**

6.—(1) Work No. 2 must not commence until a battery safety management plan has been submitted to and approved by the relevant planning authorities.

(2) The battery safety management plan must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No. 2 including the transportation of new, used and replacement battery cells both to and from the authorised development.

(3) The battery safety management plan must be substantially in accordance with the outline battery safety management plan.

(4) The relevant planning authority must consult with the Health and Safety Executive, Lincolnshire Fire and Rescue, Nottinghamshire Fire and Rescue Service and the Environment Agency before determining an application for approval of the battery safety management plan.

(5) The battery safety management plan must be implemented as approved.

### **Landscape and ecological management plan**

7.—(1) No part of the authorised development may commence until a written landscape and ecological management plan has been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) The landscape and ecological management plan must be substantially in accordance with the outline landscape and ecological management plan.

(3) The landscape and ecological management plan must be implemented as approved.

### **Biodiversity net gain**

8.—(1) No part of the authorised development may commence until a biodiversity net gain strategy has been submitted to and approved by the relevant planning authority, in consultation with the relevant statutory nature conservation body.

(2) The biodiversity net gain strategy must be substantially in accordance with the outline landscape and ecological management plan and must be implemented as approved.

### **Fencing and other means of enclosure**

9.—(1) No part of the authorised development may commence until written details of all proposed temporary fences, walls or other means of enclosure, including those set out in the construction environmental management plan, for that part have been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) No part of the authorised development may commence until written details of all permanent fences, walls or other means of enclosure for that part (which must be substantially in accordance

with the relevant outline design principles) have been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(3) For the purposes of sub-paragraph (1), “commence” includes any permitted preliminary works.

(4) Any construction site must remain securely fenced in accordance with the approved details under sub-paragraph (1) at all times during construction of the authorised development.

(5) Any temporary fencing must be removed on completion of the part of construction of the authorised development for which it was used.

(6) Any approved permanent fencing in a part must be completed before the date of final commissioning in respect of such part.

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

**10.—**(1) No part of the authorised development may commence until written details of the surface water drainage scheme and (if any) foul water drainage system (which must be substantially in accordance with the outline drainage strategy) have been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, and in each case in consultation with Anglian Water Services Limited or its successor in function as the relevant water undertaker.

(2) Any approved scheme must be implemented as approved and maintained throughout the construction and operation of the authorised development.

### **Archaeology**

**11.** The authorised development must be implemented in accordance with the archaeological mitigation strategy.

### **Construction environmental management plan**

**12.—**(1) No part of the authorised development may commence until a construction environmental management plan (which must be substantially in accordance with the framework construction environmental management plan) for that part has been submitted to and approved by the relevant planning authority, or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, such approval to be in consultation with the relevant highway authority and the Environment Agency.

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

(3) The details on the amount and type of waste from the authorised development and how it will be reused, recycled or disposed of is to be set out in a Waste Management Plan which is to be included as an appendix to the construction environmental management plan.

### **Operational environmental management plan**

**13.—**(1) Prior to the date of final commissioning for any part of the authorised development, an operational environmental management plan (which must be substantially in accordance with the framework operational environmental management plan) for that part must be submitted to and approved by the relevant planning authority for that part, or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, such approval to be in consultation with the relevant highway authority and the Environment Agency.

(2) The operational environmental management plan must be substantially in accordance with the framework operational environmental management plan and must be implemented as approved.

### **Construction traffic management plan**

14.—(1) No part of the authorised development may commence until a construction traffic management plan (which must be substantially in accordance with the framework construction traffic management plan) for that part has been submitted to and approved by the relevant planning authority for that part, or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, such approval to be in consultation with the relevant highway authority.

(2) The construction traffic management plan must be substantially in accordance with the framework construction traffic management plan.

(3) Before approving the construction traffic management plan the relevant planning authority must consult with the relevant highway authority.

### **Operational noise**

15.—(1) No part of numbered Works No. 1, No. 2 and No. 3 may commence until an operational noise assessment containing details of how the design of that numbered works has incorporated mitigation to ensure the operational noise rating levels as set out in the environmental statement are to be complied with for that part has been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) The design as described in the operational noise assessment must be implemented as approved.

### **Public rights of way diversions**

16.—(1) No part of the authorised development may commence until a public rights of way management plan (which must be substantially in accordance with the outline public rights of way management plan) for any sections of public rights of way shown to be temporarily closed on the streets, access and rights of way plans for that part has been submitted to and approved by the relevant planning authority, or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, such approval to be in consultation with the relevant highway authority.

(2) The public rights of way management plan must be substantially in accordance with the outline public rights of way management plan.

(3) The public rights of way management plan must be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the highway authority.

### **Soils management**

17.—(1) No part of the authorised development may commence until a soil management plan (which must be substantially in accordance with the outline soil management plan as relevant to construction activities) for that part has been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

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

(3) Prior to the date of final commissioning for any part of the authorised development, a soil management plan (which must be substantially in accordance with the outline soil management plan as relevant to operational activities) for that part must be submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(4) The operation of the authorised development must be carried out in accordance with the approved soil management plan.

(5) Prior to the start of any decommissioning works for any part of the authorised development, a soil management plan (which must be substantially in accordance with the outline soil management plan as relevant to decommissioning activities) for that part must be submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(6) The decommissioning of the authorised development must be carried out in accordance with the approved soil management plan.

### **Skills, supply chain and employment**

**18.—**(1) No part of the authorised development may commence until a skills, supply chain and employment plan in relation to that part has been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple planning authorities, each of the relevant planning authorities.

(2) The skills, supply chain and employment plan must be substantially in accordance with the outline skills, supply chain and employment plan.

(3) Any plan under this paragraph must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with that part of the authorised development and the means for publicising such opportunities.

(4) The skills, supply chain and employment plan must be implemented as approved.

### **Decommissioning and restoration**

**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 that part a decommissioning environmental management plan for approval.

(2) Where the undertaker decides to decommission a part of the authorised development that falls within the administrative areas of multiple planning authorities, the decommissioning environmental management plan must be submitted to each relevant planning authority and the approval of all relevant planning authorities is required for the purposes of this paragraph.

(3) The decommissioning environmental management plan must be substantially in accordance with the framework decommissioning environmental management plan.

(4) No decommissioning works must be carried out until the relevant planning authority has approved the decommissioning environmental management plan submitted in relation to those works.

(5) The decommissioning environmental management plan must be implemented as approved.

(6) This requirement is without prejudice to any other consents or permissions that may be required to decommission any part of the authorised development.

## SCHEDULE 3

Article 6

### 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 Grimsby and Sheffield Junction Railway Act 1845**(a)**;
- (b) Great Northern Railway Act 1846**(b)**;
- (c) Sheffield and Lincolnshire Junction Railway Act 1846**(c)**;
- (d) Manchester, Sheffield, and Lincolnshire Railways, and Manchester and Lincolnshire Union Railway and Chesterfield and Gainsborough Canal Amalgamation Act 1847**(d)**;
- (e) Trent (Burton on Trent and Humber) Navigation Act 1887**(e)**;
- (f) Trent Navigation Act 1906**(f)**;
- (g) Great Central Railway Act 1907**(g)**;
- (h) Lincolnshire Rivers Fisheries Provisional Order Confirmation Act 1928**(h)**;
- (i) Trent and Lincolnshire Water Act 1971**(i)**; and
- (j) Anglian Water Authority Act 1977**(j)**.

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- (a) 1845 c. 1.
  - (b) 1846 c. lxxi.
  - (c) 1846 c. ccciv.
  - (d) 1847 c. cxc.
  - (e) 1887 c. cxv.
  - (f) 1906 c. lvii.
  - (g) 1907 c. lxxviii.
  - (h) 1928 c. lxxvii.
  - (i) 1971 c. xiii.
  - (j) 1977 c. i.

SCHEDULE 4

Article 8

STREETS SUBJECT TO STREET WORKS

**Interpretation**

1. In this Schedule—

“cable works” means works to place, retain and maintain underground electrical and communications apparatus

“culvert works” means repair, replace, extend or alter and maintain an existing culvert

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of the street works</i>
District of West Lindsey	B1241 Kexby Lane	Cable works and culvert works beneath the width of the street for the length shown in green on sheet 1 of the streets, rights of way and access plans.
District of West Lindsey	Gainsborough Road A156 Southbound	Cable works beneath the width of the street for the length shown in green on sheet 4 of the streets, rights of way and access plans.
District of West Lindsey	Marton Road Eastbound	Cable works beneath the width of the street for the length shown in green on sheet 8 of the streets, rights of way and access plans.
District of West Lindsey	Clay Lane	Cable works beneath the width of the street for the length shown in green on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Willingham Road	Cable works beneath the width of the street for the length shown in green on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	A1500 Stow Park Road	Cable works and culvert works beneath the width of the street for the length shown in green on sheet 11 of the streets, rights of way and access plans.
District of West Lindsey	A156 High Street	Cable works beneath the width of the street for the lengths shown in green on sheet 12 of the streets, rights of way and access plans.
District of Bassetlaw	Headstead Bank	Cable works beneath the width of the street for the length shown in green on sheet 14 of the streets, rights of way and access plans.
District of Bassetlaw	Cow Pasture Lane	Cable works beneath the width of the street for the length shown in green on sheet 15 of the streets, rights of way and access plans.
District of Bassetlaw	Cottam Road	Cable works beneath the width of the street for the length shown in green on sheet 15 of the streets, rights of way and access plans.

SCHEDULE 5

Article 9 and Article 10

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of alteration</i>
District of West Lindsey	Field Access Kexby Lane B1241 Westbound	Permanent alteration of layout at the point marked 1/01 on sheet 1 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Kexby Lane B1241 Eastbound	Permanent alteration of layout at the point marked 1/02 on sheet 1 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Kexby Lane B1241 Westbound	Permanent alteration of layout at the point marked 1/04 on sheet 1 of the streets, rights of way and access plans.
District of West Lindsey	Proposed Access off Kexby Lane B1241 Westbound	Permanent alteration of layout at the point marked 1/05 on sheet 1 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Gainsborough Road A156 Southbound	Permanent alteration of layout at the point marked 4/02 on sheet 4 of the streets, rights of way and access plans.
District of West Lindsey	Field Gate Access Willingham Road Eastbound	Permanent alteration of layout at the point marked 6/02 on sheet 6 of the streets, rights of way and access plans.
District of West Lindsey	Access Track Marton Road Northbound	Permanent alteration of layout at the point marked 7/01 on sheet 7 of the streets, rights of way and access plans.
District of West Lindsey	Proposed Access off Private Means of Access off Marton Road Northbound	Permanent alteration of layout at the point marked 7/02 on sheet 7 of the streets, rights of way and access plans.
District of West Lindsey	Proposed Access off Private Means of Access off Marton Road Northbound	Permanent alteration of layout at the point marked 7/03 on sheet 7 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Marton Road Eastbound	Permanent alteration of layout at the point marked 8/02 on sheet 8 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Marton Road Eastbound	Permanent alteration of layout at the point marked 8/03 on sheet 8 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Marton Road Eastbound	Permanent alteration of layout at the point marked 8/05 on sheet 8 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Marton Road Eastbound	Permanent alteration of layout at the point marked 8/07 on sheet 8 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Marton Road Eastbound	Permanent alteration of layout at the point marked 8/08 on sheet 8 of the streets, rights of way and access plans.

District of West Lindsey	Field Access Marton Road Northbound	Permanent alteration of layout at the point marked 8/09 on sheet 8 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Clay Lane Eastbound	Permanent alteration of layout at the point marked 10/08 on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Proposed access Clay Lane Westbound	Permanent alteration of layout at the point marked 10/09 on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Clay Lane Westbound	Permanent alteration of layout at the point marked 10/10 on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Proposed access Clay Lane Westbound	Permanent alteration of layout at the point marked 10/11 on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Proposed access Clay Lane Eastbound	Permanent alteration of layout at the point marked 10/14 on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Proposed access off Eastbound carriageway of A1500 Stow Park Road	Permanent alteration of layout at the point marked 11/06 on sheet 11 of the streets, rights of way and access plans.
District of West Lindsey	Proposed access off Westbound carriageway of A1500 Stow Park Road	Permanent alteration of layout at the point marked 11/07 on sheet 11 of the streets, rights of way and access plans.
District of West Lindsey	Field Access A156 High Street Northbound	Permanent alteration of layout at the point marked 12/08 on sheet 12 of the streets, rights of way and access plans.
District of West Lindsey	Access Track A156 High Street Northbound	Permanent alteration of layout at the point marked 12/09 on sheet 12 of the streets, rights of way and access plans.
District of West Lindsey	Access Track A156 High Street Northbound	Permanent alteration of layout at the point marked 12/10 on sheet 12 of the streets, rights of way and access plans.
District of West Lindsey	Proposed access off Northbound Carriageway of A156 High Street	Permanent alteration of layout at the point marked 12/11 on sheet 12 of the streets, rights of way and access plans.
District of Bassetlaw	Field Access off existing access 14/03	Permanent alteration of layout at the point marked 14/02 on sheet 14 of the streets, rights of way and access plans.
District of Bassetlaw	Access Track Headstead Bank Southbound	Permanent alteration of layout at the point marked 14/03 on sheet 14 of the streets, rights of way and access plans.
District of Bassetlaw	Proposed Access off Headstead Bank Northbound	Permanent alteration of layout at the point marked 14/20 on sheet 14 of the streets, rights of way and access plans.
District of Bassetlaw	Existing access off Cow Pasture Lane	Permanent alteration of layout at the point marked 15/09 on sheet 15 of the streets, rights of way and access plans.
District of Bassetlaw	Proposed Access off Cottom Road Eastbound	Permanent alteration of layout at the point marked 15/10 on sheet 15 of the streets, rights of way and access plans.
District of Bassetlaw	Existing Field access off Cottam Road Westbound	Permanent alteration of layout at the point marked 15/12 on sheet 15 of the streets, rights of way and access plans.
District of	Proposed Access off Cow	Permanent alteration of layout at the point

Bassetlaw	Pasture Lane	marked 15/15 on sheet 15 of the streets, rights of way and access plans.
District of Bassetlaw	Field Access Torksey Ferry Road Eastbound	Permanent alteration of layout at the point marked 17/02 on sheet 17 of the streets, rights of way and access plans.

## PART 2

### TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of alteration</i>
District of West Lindsey	Junction of A1500 Stow Park Road and A156 High Street	Temporary alteration of layout within the area shaded green on Sheet 11 of the streets, rights of way and access plans.

SCHEDULE 6

Article 11

STREETS AND PUBLIC RIGHTS OF WAY

PART 1

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Measures</i>
District of West Lindsey	B1241 Kexby Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in green on sheet 1 of the streets, rights of way and access plans.
District of West Lindsey	Clay Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in green on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Willingham Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in green on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Junction of A1500 Stow Park Road and A156 High Street	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in green on sheet 11 of the streets, rights of way and access plans.
District of West Lindsey	A1500 Stow Park Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the length shown in green on sheet 11 of the streets, rights of way and access plans.
District of West Lindsey	A156 High Street	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the length shown in green on sheet 12 of the streets, rights of way and access plans.
District of Bassetlaw	Headstead Bank	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in green on sheet 14 of the streets, rights of way and access plans.
District of Bassetlaw	Cow Pasture Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in green on sheet 15 of the streets, rights of way and access plans.
District of Bassetlaw	Cottam Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in green on sheet 15 of the streets, rights of way and access plans.

## PART 2

### PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP AND DIVERTED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Measure</i>
District of West Lindsey	LL   Bram   66/1	Public right of way to be temporarily stopped up and diverted between the points PRoW-12/01 and PRoW-12/02 as shown on sheet 12 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT   Cottam   FP3	Public right of way to be temporarily stopped up and diverted between the points PRoW-14/01 and PRoW-14/02 as shown on sheet 14 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT   Cottam   RB4	Public right of way to be temporarily stopped up and diverted between the points PRoW-14/03 and PRoW-14/04 as shown on sheet 14 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT   South Leverton   BOAT16	Public right of way to be temporarily stopped up and diverted between the points PRoW-15/01 and PRoW-15/02 as shown on sheet 15 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT   Rampton   FP5	Public right of way to be temporarily stopped up and diverted between the points PRoW-17/01 and PRoW-17/02 as shown on sheet 17 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT   Rampton   FP6	Public right of way to be temporarily stopped up and diverted between the points PRoW-17/03 and PRoW-17/04

		as shown on sheet 17 of the streets, access and rights of way plans to facilitate construction of the authorised development.
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### PART 3

#### PERMANENT USE OF MOTOR VEHICLES ON PUBLIC RIGHT OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Measures</i>
District of West Lindsey	LL   Knai   44/1	Permanent use of motor vehicles under the direction of the undertaker between points PRow-2/01 and PRow-2/02 as shown on sheet 2 of the streets, access and rights of way plans to facilitate construction and operation of the authorised development.

### PART 4

#### TEMPORARY MANAGEMENT OF PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Measure (Public Right of Way to be managed during construction to maintain Public Right of Way continuity and access through the site)</i>
District of West Lindsey	LL   Knai   44/1	Public Right of Way between points PRow-2/01 and PRow-2/02 as shown on sheet 2 of the streets, access and rights of way plans to be managed during construction of the authorised development.
District of West Lindsey	LL   Mton   68/1	Public Right of Way between points PRow-11/01 and PRow-11/02 as shown on sheet 11 of the streets, access and rights of way plans to be managed during construction of the authorised development.
District of Bassetlaw	NT   Cottam   FP1	Public Right of Way between points PRow-13/01 and PRow-13/02 as shown on sheet 13 of the streets, access and rights of way plans to be managed during construction of the authorised development.
District of Bassetlaw	NT   South Leverton   BOAT16	Public Right of Way between points PRow-15/02 and PRow-15/03 as shown on sheet 15 of the streets, access and rights of way plans to be managed during construction of the authorised development.
District of Bassetlaw	NT   Rampton   BOAT13	Public Right of Way between points PRow-17/05 and PRow-17/06 as shown on sheet 17 of the streets, access and rights of way

		plans to be managed during construction of the authorised development.
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## PART 5

### TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Measure (Public Right of Way to be managed during construction to maintain Public Right of Way continuity and access through the site)</i>
District of Bassetlaw	NT   Cottam   FP3	Use of motor vehicles under the direction of the undertaker between points PRow-14/01 and PRow-14/02 as shown on sheet 14 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT   Cottam   RB4	Use of motor vehicles under the direction of the undertaker between points PRow-14/03 and PRow-14/04 as shown on sheet 14 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT   South Leverton   BOAT16	Use of motor vehicles under the direction of the undertaker between points PRow-15/01 and PRow-15/02 as shown on sheet 15 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT   Rampton   FP5	Use of motor vehicles under the direction of the undertaker between points PRow-17/01 and PRow-17/02 as shown on sheet 17 of the streets, access and rights of way plans to facilitate construction of the authorised development.

SCHEDULE 7

Article 13

PERMANENT MEANS OF ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of means of access</i>
District of West Lindsey	Kexby Lane B1241 Eastbound	The provision of a permanent means of access to the authorised development from the point marked 1/02 on the streets, access and rights of way plans.
District of West Lindsey	Kexby Lane B1241 Westbound	The provision of a permanent means of access to the authorised development from the point marked 1/05 on the streets, access and rights of way plans.
District of West Lindsey	Gainsborough Road A156 Southbound	The provision of a permanent means of access to the authorised development from the point marked 4/02 on the streets, access and rights of way plans.
District of West Lindsey	Marton Road Northbound	The provision of a permanent means of access to the authorised development from the point marked 7/01 on the streets, access and rights of way plans.
District of West Lindsey	Marton Road Northbound	The provision of a permanent means of access to the authorised development from the point marked 7/02 on the streets, access and rights of way plans.
District of West Lindsey	Marton Road Northbound	The provision of a permanent means of access to the authorised development from the point marked 7/03 on the streets, access and rights of way plans.
District of West Lindsey	Marton Road Eastbound	The provision of a permanent means of access to the authorised development from the point marked 8/03 on the streets, access and rights of way plans.
District of West Lindsey	Clay Lane Westbound	The provision of a permanent means of access to the authorised development from the point marked 10/09 on the streets, access and rights of

		way plans.
District of West Lindsey	Clay Lane Westbound	The provision of a permanent means of access to the authorised development from the point marked 10/11 on the streets, access and rights of way plans.
District of West Lindsey	Clay Lane Eastbound	The provision of a permanent means of access to the authorised development from the point marked 10/14 on the streets, access and rights of way plans.
District of West Lindsey	Eastbound carriageway of Stow Park Road	The provision of a permanent means of access to the authorised development from the point marked 11/06 on the streets, access and rights of way plans.
District of West Lindsey	Westbound carriageway of Stow Park Road	The provision of a permanent means of access to the authorised development from the point marked 11/07 on the streets, access and rights of way plans.
District of West Lindsey	A156 High Street Northbound	The provision of a permanent means of access to the authorised development from the point marked 12/09 on the streets, access and rights of way plans.
District of West Lindsey	Northbound Carriageway of A156 High Street	The provision of a permanent means of access to the authorised development from the point marked 12/10 on the streets, access and rights of way plans.
District of West Lindsey	Southbound Carriageway of A156	The provision of a permanent means of access to the authorised development from the point marked 12/11 on the streets, access and rights of way plans.
District of Bassetlaw	Field gate off existing access 14/03	The provision of a permanent means of access to the authorised development from the point marked 14/02 on the streets, access and rights of way plans.
District of Bassetlaw	Headstead Bank Southbound	The provision of a permanent means of access to the authorised development from the point marked 14/03 on the streets, access and rights of way plans.
District of Bassetlaw	Headstead Bank Northbound	The provision of a permanent

		means of access to the authorised development from the point marked 14/20 on the streets, access and rights of way plans.
District of Bassetlaw	Cow Pasture Lane	The provision of a permanent means of access to the authorised development from the point marked 15/09 on the streets, access and rights of way plans.
District of Bassetlaw	Cottam Road Eastbound	The provision of a permanent means of access to the authorised development from the point marked 15/10 on the streets, access and rights of way plans.
District of Bassetlaw	Cottam Road Westbound	The provision of a permanent means of access to the authorised development from the point marked 15/12 on the streets, access and rights of way plans.
District of Bassetlaw	Cow Pasture Lane	The provision of a permanent means of access to the authorised development from the point marked 15/15 on the streets, access and rights of way plans.
District of Bassetlaw	Torksey Ferry Road Eastbound	The provision of a permanent means of access to the authorised development from the point marked 17/02 on the streets, access and rights of way plans.

SCHEDULE 8

Article 15

TRAFFIC REGULATION MEASURES

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of temporary traffic signal and banksman control area</i>
B1241 Kexby Lane Eastbound and Westbound Carriageway to facilitate construction of the solar and energy storage park	Extents of traffic signals and banksman control presented on Sheet 1 of the Traffic Regulation Measures Plans
A156 Gainsborough Road Northbound and Southbound Carriageway to facilitate construction of the solar and energy storage park	Extents of traffic signals and banksman control presented on Sheets 4, 5 and 9 of the Traffic Regulation Measures Plans
Clay Lane Eastbound and Westbound Carriageway to facilitate the construction of operation accesses only for the solar and energy storage park	Extents of traffic signals and banksman control presented on Sheets 9 and 10 of the Traffic Regulation Measures Plans
Private Means of Access off Marton Road Northbound to facilitate construction of the solar and energy storage park	Extents of traffic signals and banksman control presented on Sheet 7 of the Traffic Regulation Measures Plans
Marton Road Eastbound and Westbound Carriageway to facilitate the construction of operation accesses only for the solar and energy storage park	Extents of traffic signals and banksman control presented on Sheet 8 of the Traffic Regulation Measures Plans
Junction of A1500 Stow Park Road and A156 High Street to facilitate abnormal load access to the solar and energy storage park	Extents of traffic signals and banksman control presented on Sheets 9, 10 and 11 of the Traffic Regulation Measures Plans
A1500 Stow Park Road Eastbound and Westbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheets 10 and 11 of the Traffic Regulation Measures Plans
A156 High Street Northbound and Southbound Carriageway adjacent to existing sewage works to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheets 9, 10, 11 and 12 of the Traffic Regulation Measures Plans
A156 High Street Northbound and Southbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheet 12 of the Traffic Regulation Measures Plans
Headstead Bank Northbound and Southbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheet 14 of the Traffic Regulation Measures Plans
Cow Pasture Lane Northbound and Southbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheet 15 of the Traffic Regulation Measures Plans
Cottam Road Eastbound and Westbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheets 15 and 17 of the Traffic Regulation Measures Plans
Torksey Ferry Road Eastbound and Westbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheet 17 of the Traffic Regulation Measures Plans

## DEEMED MARINE LICENCE UNDER THE 2009 ACT

## PART 1

## LICENSED MARINE ACTIVITIES

## 1. In this licence—

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 (authorised development) of the Order;

“commence” means the first carrying out of any licensed marine activities authorised by this marine licence;

“decommissioning activities” means those licensed activities required for the decommissioning of the authorised development;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order;

“LAT” means lowest astronomical tide;

“licence holder” means the undertaker and any agent, contractor or sub-contractor acting on its behalf;

“licensed activities” means the activities specified in Part 1 of this licence;

“maintenance activities” means those licensed activities required for the maintenance of the authorised development;

“MMO” means the Marine Management Agency, the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MHWS” means the highest level which spring tides reach on average over a period of time;

“Order” means the Gate Burton Energy Park Order 202[ ];

“undertaker” means Gate Burton Energy Park Limited (company number 12660764);

“Work No. 4B” means the work of that description in Schedule 1 (authorised development) of the Order; and

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

(1) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(2) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT); and

(b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

**Addresses for notices**

2.—(1) Except where otherwise notified in writing by the MMO, notices to the MMO must be sent to—

(a) Marine Management Organisation

Marine Licensing  
Lancaster house  
Newcastle Business Park  
Newcastle upon Tyne  
NE4 7YH  
Tel: 0300 123 1032; and

(b) Marine Management Organisation (local office)

Room 13, Ground Floor  
Crosskill House  
Mill Lane  
Beverley  
HU17 9JB

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is [marine.consent@marinemangement.org.uk](mailto:marine.consent@marinemangement.org.uk) or where contact to the local MMO office is required is [beverley@marinemangement.org.uk](mailto:beverley@marinemangement.org.uk).

### Details of licensed marine activities

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

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

(2) Such activities are authorised in relation to—

- (a) works to lay electrical cables including one 400 kilovolt cable circuit connecting Work No. 4A to Work No. 4C including tunnelling, boring and drilling works for trenchless crossings;
- (b) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, roads, including the laying and construction of drainage infrastructure, signage and information boards; and
- (c) construction compounds, including site and welfare offices and areas to store materials and equipment.

(3) The activity set out in sub-paragraph (2) is authorised in relation to the construction, maintenance and operation and decommissioning of those elements of Work No. 4B of Schedule 1 (authorised development) of this Order as defined in paragraph 1 of this Schedule, and any further associated development listed in Schedule 1 (authorised development) in connection with Work No. 4B, which are located within the area of the River Trent bounded by the coordinates specified in paragraph 4.

4.—(1) The grid coordinates for that part of the authorised development comprising Work No. 4B within the area of the River Trent are specified below—

<i>Work area</i>	<i>Easting</i>	<i>Northing</i>
4B	483065.9703	381040.0779
4B	483064.0547	381016.9825
4B	483061.6754	380985.4717
4B	483062.5813	380954.6496
4B	483062.5813	380930.3926
4B	483064.0077	380896.1461
4B	483157.7467	381053.1074

4B	483153.9409	381035.2706
4B	483152.7506	381009.8238
4B	483155.3674	380977.2429
4B	483156.3202	380966.3028
4B	483151.7991	380951.0830
4B	483151.3227	380937.2894
4B	483151.3227	380909.7023
4B	483152.0366	380902.3298
4B	483063.5327	380913.5072

(2) The coordinates in sub-paragraph (1) are defined in accordance with reference system WGS84 – World Geodetic System 1984.

5. The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within article 35 (consent to transfer the benefit of the Order).

6. With respect to any condition which requires the licensed activities to be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or project are taken to include any amendments that may subsequently be approved in writing by the MMO.

7. Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or that other person that the subject matter of the agreement sought is unlikely to give risk to any materially new or materially different environmental effects from those assessed in the environmental statement.

## PART 2 CONDITIONS

### Notifications regarding licensed activities

8. The licence holder must inform the MMO in writing of the commencement of the first licensed activity at least 24 hours prior to such commencement.

9.—(1) The licence holder must inform the MMO of the name and function of any agent or contractor appointed to engage in any licensed activity not less than 24 hours before the commencement of the licensed activity in question.

(2) Any changes to details supplied under sub-paragraph (1) must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activity in question.

(3) Only those persons notified to the MMO in accordance with this condition are permitted to carry out a licensed activity.

10. The licence holder must ensure that a copy of this Schedule has been read and understood by any agents and contractors that will be carrying out any licensed activity on behalf of the licence holder, as notified to the MMO under condition 9.

11. Copies of this Schedule must be made available for inspection at the following locations—

- (a) the licence holder's registered office; and
- (b) during the construction of the authorised development only, at any site office which has been provided for the purposes of the construction or maintenance or decommissioning of the authorised development.

## **Pollution prevention**

12. The licence holder must—

- (a) not discharge waste concrete slurry or wash water from concrete, or cement into the marine environment, and where practicable, site concrete and cement mixing and washing areas at least 10 metres away from the marine environment and any surface water drain to minimise the risk of run off entering the marine environment;
- (b) store, handle, transport and use fuels, lubricants, chemicals and other substances so as to prevent releases into the marine environment, including bunding or storage of 110% of the total volume of all reservoirs and containers;
- (c) report any spill of oil, fuel or chemicals into the marine area to the MMO Marine Pollution Response Team (by telephone, within office hours on 0300 200 2024, or outside office hours on 07770 977 825, and at all times, if no response to calls to those numbers, on 0345 051 8486 or via email using [dispersants@marinemangement.org.uk](mailto:dispersants@marinemangement.org.uk) within 12 hours of the spill occurring;
- (d) store all waste in designated areas that are isolated from surface water drains and open water and are bunded;
- (e) use suitable protective sheeting to prevent dust, debris (including paints and solvents) and rebounded or windblown concrete from entering the water environment, and rebounded material must be cleared away before the sheeting is removed;
- (f) ensure that any coatings and any treatments are suitable for use in the marine environment and are used in accordance with either guidelines approved by the Health and Safety Executive of the Environment Agency;
- (g) not use priority substances and polluting chemicals listed under the Environmental Quality Standards Directive during works.

## **Post-construction**

13. The licence holder must remove all temporary structures, waste and debris associated with the licensed activities within 6 weeks following completion of the final construction activity.

## **Maintenance**

14.—(1) Unless otherwise agreed by the MMO, the maintenance activities may not commence until a maintenance plan has been approved in writing by the MMO.

(2) The maintenance plan must be submitted at least 6 weeks prior to the commencement of any maintenance activity, and must include details of the maintenance activities required including location, duration, timings, methodology and materials to be used.

(3) Maintenance activities must be undertaken in accordance with the agreed plan.

## **Decommissioning**

15.—(1) Unless otherwise agreed by the MMO, the decommissioning activities may not commence until a decommissioning plan has been approved in writing by the MMO.

(2) The decommissioning plan must be submitted at least 6 weeks prior to the commencement of any decommissioning activity, and must include details of the decommissioning activities required including location, duration, timings, methodology and materials to be used.

(3) Decommissioning activities must be undertaken in accordance with the agreed plan.

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

**Interpretation****1. In this Schedule—**

“access rights” means rights over land to—

- (a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays, bridges and road widening and to remove impediments (including vegetation) to such access;
- (b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) for all purposes in connection with the authorised development;
- (c) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary;
- (d) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works; and
- (e) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

“cable rights” means rights over land to—

- (a) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus;
- (b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development;
- (c) continuous vertical and lateral support for the authorised development;
- (d) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;
- (e) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the

implementation and maintenance of landscaping and ecological mitigation or enhancement works;

- (f) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary; and
- (g) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

“services rights” means rights over land to—

- (a) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;
- (b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the substation works; and
- (c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

<i>(1)</i> <i>Plot reference number shown on the Land Plans</i>	<i>(2)</i> <i>Purposes for which rights over land may be required and restrictive covenants imposed</i>
1/3	access rights
1/6	cable rights
3/2	cable rights
4/3	access rights and services rights
4/4	access rights and services rights
5/1	access rights and services rights
5/2	access rights and services rights
5/11	cable rights
6/3	cable rights
6/6	cable rights
6/7	cable rights
6/8	cable rights
6/10	cable rights
6/11	cable rights
7/3	access rights
7/6	access rights
7/7	access rights
8/7	access rights
9/1	access rights and services rights
9/2	access rights
9/3	access rights and services rights
10/1	access rights
10/2	access rights and services rights
10/5	cable rights
10/6	cable rights
10/7	cable rights
10/10	access rights
10/15	cable rights

11/1	access rights
11/2	access rights
11/3	access rights
11/4	access rights
11/5	cable rights
11/6	cable rights
11/7	cable rights
11/8	cable rights
12/1	cable rights
12/2	cable rights
12/3	access rights
12/4	cable rights
12/5	access rights
12/6	cable rights
12/7	cable rights
12/8	access rights
12/9	cable rights
12/13	access rights
12/14	access rights
12/15	access rights
12/16	access rights
12/17	access rights
12/18	cable rights
12/19	cable rights
12/20	cable rights
12/21	cable rights
12/22	cable rights
12/23	cable rights
12/24	cable rights
12/25	cable rights
13/1	cable rights
13/2	cable rights
13/3	cable rights
13/4	cable rights
13/5	cable rights
13/6	cable rights
13/7	cable rights
13/8	cable rights
14/1	cable rights
14/2	cable rights
14/3	cable rights
14/4	cable rights
14/5	cable rights
14/6	access rights
14/7	cable rights
14/8	cable rights
14/9	cable rights
14/10	access rights
14/11	access rights
14/12	access rights
14/13	cable rights
14/14	cable rights
14/15	cable rights

14/16	cable rights
14/17	cable rights
14/18	cable rights
14/19	cable rights
14/20	access rights
15/1	access rights
15/2	cable rights
15/3	cable rights
15/4	cable rights
15/5	cable rights
15/6	cable rights
15/8	cable rights
15/9	cable rights
15/10	access rights
15/11	cable rights
15/12	cable rights
15/13	cable rights
15/14	access rights
16/1	access rights
16/2	access rights
16/3	access rights
17/1	cable rights
17/2	cable rights
17/3	cable rights
17/4	cable rights
17/5	cable rights
17/6	cable rights
17/7	cable rights
17/8	cable rights

## MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE 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 modifications 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 pursuant of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 11 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) to the Gate Burton Energy Park Order 202[\*];
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(7) of Schedule 11 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) to the Gate Burton Energy Park Order 202[\*]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land

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

### Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 20 (compulsory acquisition of land) and as modified by article 27 (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 22 (compulsory acquisition of rights)—

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(a) 1973 c. 26.

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

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

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

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

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

“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 (as it applies to compulsory acquisition under article 20 (compulsory acquisition of land)), 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 (f) (tenants at will, etc.) 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

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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 Court 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.

interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 27(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 to the 1965 Act (counter notice requiring purchase of land not in notice to treat) substitute—

## “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 24 (application of the 1981 Act) of the Gate Burton Energy Park Order 202[\*] in respect of the land to which the notice to treat relates.

(2) But see article 25(3) (acquisition of subsoil only) of the Gate Burton Energy Park 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 12

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Plot reference number shown on the Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
4/2	Temporary use to facilitate the construction of Work Nos. 1 to 9
12/10	
12/11	
12/12	
15/7	Temporary use to facilitate the construction of Work No. 4

SCHEDULE 13

Article 40

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>
Book of Reference	EN010131/APP/6.6	1	27 January 2023
Crown land plans	EN010131/APP/5.7	1	27 January 2023
Environmental statement	EN010131/APP/3.3	1	27 January 2023
Framework construction environmental management plan	EN010131/APP/7.3	1	27 January 2023
Framework Construction Traffic Management Plan (Appendix 13E of the Environmental Statement)	EN010131/APP/3.3	1	27 January 2023
Framework decommissioning environmental management plan	EN010131/APP/7.5	1	27 January 2023
Framework operational environmental management plan	EN010131/APP/7.4	1	27 January 2023
Land plans	EN010131/APP/5.6	1	27 January 2023
Outline battery safety management plan	EN010131/APP/7.1	1	27 January 2023
Outline design principles	EN010131/APP/2.3	1	27 January 2023
Outline drainage strategy	EN010131/APP/3.3	1	27 January 2023
Outline landscape and ecological management plan	EN010131/APP/7.10	1	27 January 2023
Outline public rights of way management plan	EN010131/APP/7.8	1	27 January 2023
Outline skills, supply chain and employment plan	EN010131/APP/7.7	1	27 January 2023
Outline soil management plan	EN010131/APP/7.12	1	27 January 2023
Outline waterbodies in a river basin management plan	EN010131/APP/3.9	1	27 January 2023
Streets, access and rights of way plans	EN010131/APP/5.3	1	27 January 2023
Traffic regulation measures plans	EN010131/APP/5.5	1	27 January 2023

Works plans	EN010131/APP/5.2	1	27 January 2023
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## SCHEDULE 14

Article 42

### ARBITRATION RULES

#### **Commencing an arbitration**

1. The arbitration is deemed to have commenced when a party (“the claimant”) serves a written notice of arbitration on the other party (“the respondent”).

#### **Time periods**

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

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

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

#### **Timetable**

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

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

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

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

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

(4) Within seven days of the respondent serving its statements under sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

- (a) a written statement responding to the respondent’s submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the respondent’s submissions;
- (c) any expert report in response to the respondent’s submissions;

- (d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

### **Procedure**

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

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

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

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

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

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

(7) There is to be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

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

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

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

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

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

### **Arbitrator's powers**

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, save where modified in this Schedule.

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

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

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

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

### **Costs**

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

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

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

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

### **Confidentiality**

7.—(1) Hearings in this arbitration are to take place in private.

(2) Materials, documents, awards, expert reports and any matters relating to the arbitration are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the courts or where disclosure is required under any legislative or regulatory requirement.

## 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;
- (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; and

- (e) any other mains, pipelines or cables that are not the subject of the protective provisions in Parts 2 to 6 of this Schedule;

“functions” includes powers and duties;

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);

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(a) 1989 c. 29.

(b) 1991 c. 56.

- (c) water undertaker within the meaning of the Water Industry Act 1991;
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991; and
  - (e) an owner or operator of apparatus within paragraph (e) of the definition of that term,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This part 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 11 (temporary stopping up 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 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 42 (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 42 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation

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

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 42 (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 42 (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.

## PART 2

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

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

13. 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 31 (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

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(a) 2003 c. 21.

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

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

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

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

**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.

## PART 3

### FOR THE PROTECTION OF DRAINAGE AUTHORITIES

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

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

“authorised development” has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and the construction of any works authorised by this Part of this Schedule;

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

“drainage authority” means in relation to an ordinary watercourse—

- (a) the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991; or
- (b) in the case of any area for which there is no such drainage board, the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010;

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

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

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

“specified work” means so much of the authorised development as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to affect the flow of water in any watercourse.

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

(2) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 9.

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

- (a) must not be unreasonably withheld or delayed;

- (b) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and
  - (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work taking into account the terms of this Order.
- (4) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

**21.** Without limiting the scope of paragraph 20, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary taking account of the terms of this Order—

- (a) to safeguard any drainage work against damage by reason of any specified work; or
- (b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased beyond the level of flood risk that was assessed in the environmental statement, by reason of any specified work.

**22.—(1)** Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 21, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

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

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than seven days after the date on which it is brought into use.

**23.** If by reason of the construction of a specified work or of the failure of any a specified work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

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

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

**25.—(1)** The undertaker must make reasonable compensation for liabilities, costs and losses which may be reasonably incurred or suffered by reason of—

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

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand.

(3) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(4) The drainage authority must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(5) The drainage authority will, having regard to its statutory functions, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(6) The drainage authority will, at the request of the undertaker and having regard to its statutory functions, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

(7) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

(8) Nothing in subparagraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the drainage authority or the breach of a statutory duty of the drainage authority, its officers, servants, contractors or agents.

26. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 42 (arbitration).

## PART 4

### FOR THE PROTECTION OF COTTAM SOLAR PROJECT LIMITED

27. The provisions of this Part apply for the protection of Cottam unless otherwise agreed in writing between the undertaker and Cottam.

28. In this Part—

“apparatus” means the cables, structures or other infrastructure owned, occupied or maintained by Cottam or its successor in title within the Cottam Work No. [6B] Area;

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

“Cottam” means an undertaker with the benefit of all or part of the Cottam Solar Order for the time being;

“Cottam Solar Order” means the Cottam Solar Project Order 202[ ] as granted by the Secretary of State;

“Cottam Work No. [6B] Area” means the area for Work No. [6B] authorised in the Cottam Solar Order;

“plans” includes sections, drawings, specifications, designs, design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the Cottam Work No. [6B] Area;

“specified works” means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

(a) within the Cottam Work No. [6B] Area;

- (b) in, on, under, over or within 25 metres of the proposed Cottam Work No. [6B] Area or any apparatus; or
- (c) may in any way adversely affect any apparatus.

**29.** The consent of Cottam under this Part is not required where the Cottam Solar Order has expired without the authorised development having been commenced pursuant to requirement 1 of Schedule 2 to the Cottam Solar Order.

**30.** Where conditions are included in any consent granted by Cottam pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Cottam.

**31.** The undertaker must not under the powers of this Order acquire, extinguish, suspend, override or interfere with any rights that Cottam has in respect of any apparatus or the proposed Cottam Work No. [6B] Area without the consent of Cottam, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

**32.—(1)** The undertaker must not under the powers of this Order carry out any specified works without the consent of Cottam, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if Cottam does not respond within 28 days of the undertaker's request for consent, then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to Cottam and must submit such further particulars available to it that Cottam may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Cottam.

(4) Any approval of Cottam required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus in the proposed Cottam Work No. [6B] Area or for securing access to such apparatus or the proposed Cottam Work No. [6B] Area;

(5) Where Cottam requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to Cottam's reasonable satisfaction.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

**33.—(1)** The undertaker must give to Cottam not less than 28 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of their construction, must give Cottam written notice of the completion.

(2) The undertaker is not required to comply with paragraph 32 or sub-paragraph (1) in a case of emergency, but in that case it must give to Cottam notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonable practicable subsequently and must comply with paragraph 32 in so far as is reasonably practicable in the circumstances.

**34.** The undertaker must at all reasonable times during construction of the specified works allow Cottam and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

**35.—(1)** After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Cottam requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Cottam Work No. [6B] Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Cottam may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

**36.** If in consequence of the exercise of the powers conferred by 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 Cottam to maintain or use the apparatus no less effectively than was possible before the obstruction.

**37.** The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Cottam to the proposed Cottam Work No. [6B] Area.

**38.** To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within Cottam Work No. [6B] Area request up-to-date written confirmation from Cottam of the location of any apparatus or proposed apparatus.

**39.** The undertaker and Cottam must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

**40.** The undertaker must pay to Cottam the reasonable expenses incurred by Cottam in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the proposed Cottam Work No. [6B] Area.

**41.—(1)** Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by Cottam, or Cottam becomes liable to pay any amount to any third party, the undertaker must—

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

(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 Cottam, its officers, servants, contractors or agents.

(3) Cottam must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) Cottam must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 41 applies. If requested to do so by the undertaker, Cottam shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 41 for claims reasonably incurred by Cottam.

(5) The fact that any work or thing has been executed or done with the consent of Cottam and in accordance with any conditions or restrictions prescribed by Cottam or in accordance with any plans approved by Cottam or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

**42.** Any dispute arising between the undertaker and Cottam under this Part must be determined by arbitration under article 42 (arbitration).

## [PART 5

### FOR THE PROTECTION OF WEST BURTON SOLAR PROJECT LIMITED

**43.** The provisions of this Part apply for the protection of West Burton unless otherwise agreed in writing between the undertaker and West Burton.

**44.** In this Part—

“apparatus” means the cables, structures or other infrastructure owned, occupied or maintained by West Burton or its successor in title within the West Burton Work No. [XX] Area;

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

“West Burton” means an undertaker with the benefit of all or part of the West Burton Solar Order for the time being;

“West Burton Solar Order” means the West Burton Solar Project Order 202[ ] as granted by the Secretary of State;

“West Burton Work No. [XX] Area” means the area for Work No. [XX] authorised in the West Burton Solar Order;

“plans” includes sections, drawings, specifications, designs, design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the West Burton Work No. [XX] Area;

“specified works” means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

- (a) within the West Burton Work No. [XX] Area;
- (b) in, on, under, over or within 25 metres of the proposed West Burton Work No. [XX] Area or any apparatus; or
- (c) may in any way adversely affect any apparatus.

**45.** The consent of West Burton under this Part is not required where the West Burton Solar Order has expired without the authorised development having been commenced pursuant to requirement [X] of Schedule [X] to the West Burton Solar Order.

**46.** Where conditions are included in any consent granted by West Burton pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by West Burton.

**47.** The undertaker must not under the powers of this Order acquire, extinguish, suspend, override or interfere with any rights that West Burton has in respect of any apparatus or the proposed West Burton Work No. [XX] Area without the consent of West Burton, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

**48.—(1)** The undertaker must not under the powers of this Order carry out any specified works without the consent of West Burton, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if West Burton does not respond within 28 days of the undertaker’s request for consent, then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to West Burton and must submit such further particulars available to it that West Burton may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by West Burton.

(4) Any approval of West Burton required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus in the proposed West Burton Work No. [XX] Area or for securing access to such apparatus or the proposed West Burton Work No. [XX] Area;

(5) Where West Burton requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to West Burton’s reasonable satisfaction.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works,

new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

**49.**—(1) The undertaker must give to West Burton not less than 28 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of their construction, must give West Burton written notice of the completion.

(2) The undertaker is not required to comply with paragraph 48 or sub-paragraph (1) in a case of emergency, but in that case it must give to West Burton notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonable practicable subsequently and must comply with paragraph 48 in so far as is reasonably practicable in the circumstances.

**50.** The undertaker must at all reasonable times during construction of the specified works allow West Burton and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

**51.**—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from West Burton requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the West Burton Work No. [XX] Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), West Burton may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

**52.** If in consequence of the exercise of the powers conferred by 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 West Burton to maintain or use the apparatus no less effectively than was possible before the obstruction.

**53.** The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by West Burton to the proposed West Burton Work No. [XX] Area.

**54.** To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within West Burton Work No. [XX] Area request up-to-date written confirmation from West Burton of the location of any apparatus or proposed apparatus.

**55.** The undertaker and West Burton must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

**56.** The undertaker must pay to West Burton the reasonable expenses incurred by West Burton in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the proposed West Burton Work No. [XX] Area.

**57.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by West Burton, or West Burton becomes liable to pay any amount to any third party, the undertaker must—

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

(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 West Burton, its officers, servants, contractors or agents.

(3) West Burton must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) West Burton must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 57 applies. If requested to do so by the undertaker, West Burton shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 57 for claims reasonably incurred by West Burton.

(5) The fact that any work or thing has been executed or done with the consent of West Burton and in accordance with any conditions or restrictions prescribed by West Burton or in accordance with any plans approved by West Burton or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

**58.** Any dispute arising between the undertaker and West Burton under this Part must be determined by arbitration under article 42 (arbitration).]

## PART [6]

### FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED AS WATER UNDERTAKER

#### **Application**

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

#### **Interpretation**

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

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

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

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means:

- (a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991;
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,
- (d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water, and
- (e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

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

“functions” includes powers and duties;

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

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

### **On street apparatus**

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

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

62. Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 11 (temporary stopping up of public rights of way), Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Protective works to buildings**

63. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

### **Acquisition of land**

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

### **Removal of apparatus**

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

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 66.

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which must remain the sole responsibility of Anglian Water or its contractors unless these works are to be carried out by the undertaker in accordance with sub-paragraph (6).

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker must, before taking or requiring any further step in such substitution works, use reasonable endeavours to comply with Anglian Water’s reasonable requests for a reasonable period of time to enable Anglian Water to:

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

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

**66.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

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

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

## **Retained apparatus**

67.—(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 65(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

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

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

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (7) (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 65(2).

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

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

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

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres
- (c) 4.5 metres where the diameter of the pipe is between 451 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres.

## **Expenses and costs**

68.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

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

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

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

the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of subparagraph (1) must be reduced by the amount of that excess.

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

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

**69.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 63 or 65(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

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

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

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

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

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

(5) Anglian Water must use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the undertaker must bear and pay the costs for.

## **Cooperation**

**70.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 65(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 67(2), the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development

and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

71. Where the undertaker identifies any apparatus which they have reason to believe may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it must inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

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

73. The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

## PART [7]

### FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC AS ELECTRICITY UNDERTAKER

#### Application

74. For the protection of National Grid Electricity Distribution (East Midlands) plc (NGED) the following provisions, unless otherwise agreed in writing between the undertaker and NGED, have effect.

#### Interpretation

75. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable NGED to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

“alternative rights” means all and any necessary legal easements, leases, consents, or permissions required by NGED in order to permit or authorise a diversion and to permit or authorise NGED to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by NGED;

“diversion” means an alteration to the NGED Network in order to enable or facilitate the authorised development;

“functions” includes powers and duties;

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

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

“specified work” means so much of any of the authorised development that is carried out within 3 metres of any apparatus;

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(a) 1989 c. 29.

“NGED” means National Grid Electricity Distribution (East Midlands) plc (company number 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

“NGED Network” means NGED’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the Electricity Act 1989.

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

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

### **No acquisition except by agreement**

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

### **Removal of apparatus**

**78.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(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 NGED 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.

(3) If as a consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must give to the undertaker 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 this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities and alternative rights for the construction of alternative apparatus in the other land owned or controlled by the undertaker as reasonably required by the NGED.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), NGED shall on the transfer of the benefit of the necessary provisions of this Order to NGED use the powers of

compulsory acquisition set out in this Order or the Electricity Act 1989<sup>(a)</sup> to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed in accordance with a timetable agreed between NGED and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3)) must be constructed in such manner and in such line or situation as may be agreed between NGED and the undertaker or in default of agreement settled in accordance with article 42 (arbitration).

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to article 42 (arbitration), and after the grant to NGED of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), 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.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to NGED 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 NGED, must be executed by the undertaker—

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and NGED, or, in default of agreement, determined in accordance with article 42 (arbitration); and
- (b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NGED.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 300 millimetres of the point of connection or disconnection.

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

**79.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGED facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights must be granted upon such terms and conditions as may be agreed between the undertaker and NGED or in default of agreement settled in accordance with article 42 (arbitration).

(2) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to NGED 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 NGED as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**80.**—(1) Not less than 28 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 78 (removal of apparatus), the undertaker shall submit to NGED a plan of the works to be executed. Any submission must note the time limits imposed on NGED under sub-paragraph (3).

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(a) 1989 c. 29.

(2) Subject to sub-paragraph (3) the undertaker shall not commence any works to which sub-paragraph (1) applies until NGED has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted NGED has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by NGED and NGED shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker must comply with NGED's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Edition) (2014) as the same may be replaced from time to time.

(6) If NGED, in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 78(2) (removal of apparatus).

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

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) and with sub-paragraph (4) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (7).

### **Expenses and costs**

**81.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to NGED the reasonable expenses incurred by NGED in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

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

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for NGED's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, NGED shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(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 78(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.

**82.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works as are referred to in paragraph 78(2) any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NGED the undertaker is to—

- (a) bear and pay the cost reasonably incurred by NGED in making good such damage or restoring the supply; and
- (b) make reasonable compensation to NGED for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by NGED, by reason or in consequence of any such damage or interruption.
- (c) NGED must, at all times, take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages expenses or loss.

(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 NGED, its officers, servants, contractors or agents.

(3) NGED 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.

## PART [8]

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

**83.** The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

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

“the Agency” means the Environment Agency;

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

“drainage work” means any main river and includes any land which provides flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

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

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of such watercourses;

“plans” includes sections, drawings, specifications, calculations and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any main river;
- (c) cause obstruction to the free passage of fish or damage to any fishery;
- (d) affect the conservation, distribution or use of water resources; or
- (e) affect the conservation value of the main river and habitats in its immediate vicinity and “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

**85.** The provisions within this Part of this Schedule will not apply where a matter would fall within the remit of the Lead Local Flood Authority or the relevant internal drainage board under the Land Drainage Act 1991.

**86.—(1)** Before commencing construction any specified work, the undertaker must submit to the Agency for its approval plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 95.

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

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal;
- (c) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (d) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(c).

**87.** The requirements which the Agency may have under paragraph 86(3)(d) include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased beyond the level of flood risk that was assessed in the environmental statement,

by reason of any specified work.

**88.—(1)** Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 87, must be constructed—

without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and

to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days’ notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than seven days after the date on which it is completed.

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

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

(5) Subject to sub-paragraph (6) and paragraph 93, if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph (4).

**89.**—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the Order limits and on Order land, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) Subject to sub-paragraph (4) and paragraph 93, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 95.

(5) This paragraph does not apply to—

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

**90.** Subject to paragraph 93, if by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to

do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

**91.** If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

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

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

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

(3) Subject to paragraph 93, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing will be recoverable from the undertaker.

(4) Subject to paragraph 93, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**93.** The undertaker must make reasonable compensations for costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**94.—(1)** The undertaker must make reasonable compensation for costs and losses which may be reasonably incurred or suffered by the Agency by reason of—

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

(2) In sub-paragraph (1)—

“costs” includes—

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

“losses” includes physical damage.

(3) The undertaker must make reasonable compensation for liabilities, claims and demands against the Agency arising out of or in connection with the authorised development or otherwise out of the matters referred to in sub-paragraphs (1)(a) and (1)(b).

(4) In sub-paragraph (3)—

“claims” and “demands” include as applicable—

(a) costs (within the meaning of sub-paragraph (2) incurred in connection with any claim or demand; and

(b) any interest element of sums claimed or demanded; and

“liabilities” includes—

(a) contractual liabilities;

(b) tortious liabilities (including liabilities for negligence or nuisance);

(c) liabilities to pay statutory compensation or for breach of statutory duty; and

(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable notice of any such claim or demand.

(6) The Agency must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(7) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(8) The Agency must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

(9) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

95. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 42 (arbitration), but will otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Business, Energy, and Industrial Strategy or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

## PART [9]

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

#### **Application**

96. For the protection of National Grid as referred to in this Part of this Schedule the following provisions must, unless otherwise agreed in writing, have effect.

#### **Interpretation**

97. 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(a), belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to this 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 must be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order (unless otherwise specified) and for the purposes of this Part of this Schedule must include the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“functions” includes powers and duties;

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

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

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

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

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

“National Grid” means National Grid Electricity Transmission Plc (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“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; and

“specified works” means any of the authorised development or activities (including onshore site preparation works, monitoring, ground work operations or the receipt and erection of construction plant and equipment) undertaken in association with the authorised development 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 102 or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 102 or otherwise; and/or
- (c) includes in relation to any electricity apparatus any activity that is referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines.”

**98.** Except for paragraphs 99 (apparatus of National Grid in streets subject to temporary stopping up), 104 (retained apparatus: protection of National Grid as electricity undertaker), 105 (expenses) and 106 (indemnity) which must apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, this Schedule does not apply

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(a) 1989 c.29.

to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in streets subject to temporary stopping up**

**99.**—(1) Where any public right of way is stopped up under article 11 (temporary stopping up of public rights of way), if National Grid has any apparatus in the street or accessed via that street National Grid must be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or must 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 102 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 104.

(2) Notwithstanding the temporary stopping up under the powers of article 11, National Grid must be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

### **Protective works to buildings**

**100.** The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid which must not unreasonably be withheld.

### **Acquisition of land**

**101.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to this Order, the undertaker must not appropriate or acquire or take temporary possession of any land or apparatus or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) 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.

(3) Any agreement or consent granted by National Grid under paragraph 104 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

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

(2) If, for the purpose of executing any works 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 56 days'

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 103 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 do so.

(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**

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above 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 must be referred to arbitration under paragraph 110 (arbitration) 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. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 42 (arbitration) of this Order must apply.

#### **Retained apparatus: Protection of National Grid as Electricity Undertaker**

**104.**—(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—
  - (a) 15 metres measured in any direction of any apparatus, or

(b) involve embankment works within 15 metres of any apparatus,

the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

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

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

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; 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-paragraph (1), (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (1), (2) or (3)—

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

(6) In relation to a work to which sub-paragraph (1), (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (2), (3) or (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 (5), (6), (8) and/or (9) 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 specified works for which protective works are required and National Grid must give notice of 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 (1) to (3) and (6) to (7) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 102(2).

(10) Nothing in this paragraph shall preclude 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 any specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under this Order, the undertaker must comply with National Grid's policies for development near overhead lines ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines).

## **Expenses**

**105.**—(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 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 apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 102(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;
- (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 103(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 settled by arbitration in accordance with article 42 (arbitration) of this Order 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.

## **Indemnity**

**106.**—(1) Subject to sub-paragraphs 106(2) and 106(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 him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand 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 other than arising from any default by 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 (2) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 5 (benefit of the Order) of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-paragraph (3) will be subject to the full terms of this Part of this Schedule including this paragraph 106 in respect of such new apparatus; 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 claim or demand and no settlement, admission of liability or compromise or demand must be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

### **Enactments and agreements**

107. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and National Grid, 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**

108.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 102(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 104, National Grid shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

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

### **Access**

109. If in consequence of the agreement reached in accordance with paragraph 101 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**

**110.** Save for differences or disputes arising under paragraphs 102(2), 102(4), 103 and 104 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (arbitration).

### **Notices**

**111.** The plans submitted to National Grid by the undertaker pursuant to paragraph 104 must be sent to National Grid LSBUD at <https://lsbud.co.uk/> or [assetprotection@nationalgrid.com](mailto:assetprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PROCEDURE FOR DISCHARGE OF REQUIREMENTS

**Interpretation****1.** In this Schedule—

“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 4(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 planning authority must give notice to the undertaker of its decision on the application within a period of six 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 4, 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 compared to those 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 compared to those 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.

**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 10 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 15 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 sub-paragraph (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.

## Appeals

4.—(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(4);
- (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
- (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 may 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 (c) to (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 planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) 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) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to 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.

## **EXPLANATORY NOTE**

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

This Order authorises Gate Burton Energy Park Limited (referred to in this Order as the undertaker) to construct, operate, maintain and decommission a ground mounted solar photovoltaic generating station with a gross electrical output capacity over 50 megawatts and associated development. The Order would permit the undertaker to acquire, compulsorily or by 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 the Order and certified in accordance with article 40 (certification of plans and documents, etc) of this Order may be inspected free of charge during working hours at [XX].