

202[ ] No. 0000

**INFRASTRUCTURE PLANNING**

The West Burton Project Order 202[ ]

*Made* - - - - 202[ ]

*Coming into force* - - 202[ ]

**Comment [ERR1]:**  
Warning only High impact [e00023]  
The format of the Made date  
paragraph is incorrect

**Comment [ERR2]:**  
Warning only High impact [e00026]  
The format of the Coming into Force  
date is incorrect

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SCHEDULE 17 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

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having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74(2)(d) of the 2008 Act made a report and recommendation to the Secretary of State.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), 123(k) of the 2008 Act, makes the following Order—

**PART 1**  
**PRELIMINARY**

**Citation and commencement**

1. This Order may be cited as the [West Burton Solar Project Order 202[\*]] and comes into force on [ ] 202[\*].

**Interpretation**

2.—(1) In this Order—

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

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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, S.I. 2017/572, 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.

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

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

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

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

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

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

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

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

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

“access plan” means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which are certified by the Secretary of State as the access plan for the purposes of this Order;

“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 14 (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(j) (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;

“concept design parameters and principles” means the document of that name identified in the table of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the concept design parameters and principles for the purposes of this Order;

[“Cottam Solar Project Order” means a development consent order granted by the Secretary of State following an application by Cottam Solar Project Limited for the Cottam Solar Project;]

“crown land plan” means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which are certified by the Secretary of State as the crown land plan for the purposes of this Order;

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- (a) 1965 c. 56.
  - (b) 1980 c. 66.
  - (c) 1981 c. 66.
  - (d) 1984 c. 27.
  - (e) 1989 c. 29.
  - (f) 1990 c. 8.
  - (g) 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).
  - (h) 2008 c. 29.
  - (i) 2009 c. 23.
  - (j) As amended by paragraph 10(2) of Schedule 7 to the Planning and Compensation Act 1991 c. 34.

“date of final commissioning” means the date on which 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 21 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;

“environmental statement” means the document of that name identified in the table at Schedule 14 (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;

[“Gate Burton Energy Park Order” means a development consent order granted by the Secretary of State following an application by Gate Burton Energy Park Limited for the Gate Burton Energy Park;]

“hedgerows plan” means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which are certified by the Secretary of State as the hedgerows plan for the purposes of this Order;

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

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

“land plan” means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which are certified by the Secretary of State as the land plan 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 1989 Act;

“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 storage safety management plan” means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the battery storage safety management plan for the purposes of this Order;

“outline construction environmental management plan” means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“outline construction traffic management plan” means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified by the

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(a) “highway” is defined in section 328(1). For “highway authority” see section 1.  
(b) 2006 c. 46.

Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“outline decommissioning statement” means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline decommissioning statement for the purposes of this Order;

“outline drainage strategy” means the document of that name identified in the table at Schedule 14 (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;

“outline ecological protection and mitigation strategy” means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline ecological protection and mitigation strategy for the purposes of this Order;

“outline landscape and ecological management plan” means the document of that name identified in the table at Schedule 14 (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 operational environmental management plan” means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline operational environmental 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 14 (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 14 (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 soils management plan” means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline soils 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;

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(a) 1981 c. 67.

“public rights of way plan” means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which are certified by the Secretary of State as the public rights of way plan for the purposes of this Order;

“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 at 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(a);

“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(b);

“streets plan” means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which are certified by the Secretary of State as the streets plan 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(c);

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

“undertaker” means West Burton Solar Project Limited (company number 13049324) 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;

“works plan” means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which are certified by the Secretary of State as the works plan for the purposes of this Order;

“written scheme of investigation” means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the written scheme of investigation for the purposes of this Order.

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

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

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(a) 2003 c. 21.

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

(c) 2006 c. 46.

(d) 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.

(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. 1” or “numbered work 1” means numbered works 1A, 1B, 1C and 1D inclusive and the same principle applies to such numbered works that contain letters.

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

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

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

## PART 2

### PRINCIPAL POWERS

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

**3.—**(1) Subject to the provisions of this Order and the requirements 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(a) (powers to make byelaws) of the Land Drainage Act 1991;

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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.

- (d) section 24 (restrictions on abstraction) of the Water Resources Act 1991**(b)**;
- (e) section 25(c) (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**(d)** (byelaw making powers of the appropriate agency) to the Water Resources Act 1991;
- (g) section 118 (consent request for discharge of trade effluent into public sewer) of the Water Industry Act 1991**(e)**;
- (h) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016**(f)**;
- (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**(g)** 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**(h)** 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**(i)** 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**(j)** in relation to a nuisance falling within sub-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—

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- (a) 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).
  - (b) 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).
  - (c) 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).
  - (d) 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. 2013/775. 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.
  - (e) 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).
  - (f) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.
  - (g) 2017 c. 20.
  - (h) 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.
  - (i) S.I. 2010/948, amended by S.I. 2011/987. There are other amending instruments but none are relevant to this Order.
  - (j) 1990 c. 43.

- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the 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<sup>(a)</sup>, 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.

(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.

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<sup>(a)</sup> 1974 c. 40.

(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 authority where applicable and, unless otherwise agreed by the highway 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 authority.

(2) 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 street authority where applicable 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.

(3) Subject to paragraph (4), 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.

(4) 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.

(5) 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.

(6) For the purposes of a defence under paragraph (5), 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.

(7) Paragraphs (2) to (6) 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 streets and 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 street or 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 street or public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, prohibition, restriction, alteration or diversion of a street or 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; and
- (c) the public rights of way specified in column 2 of the table in Part 3 (public rights of way to be temporarily stopped up) 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 street or public right of way specified in paragraph (3) without first consulting the street authority; and
- (b) any other street or 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 street or 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 street or 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 both in this article and in the 1984 Act have the same meaning as in that Act.

### **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 paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

### **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 Part 1 (permanent means of access to works) of Schedule 7 (access to works);
- (b) form and lay out the temporary means of access in the location specified in Part 2 (temporary means of access) of Schedule 7 (access to works); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **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(a).

(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(b) when in accordance with regulation 3(5) of those regulations.

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

- (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(c) (road traffic contraventions subject to civil enforcement).

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**16.**—(1) Subject to paragraphs (3), (4) and (7) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance

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(a) S.I. 2016/362.  
(b) S.I. 2011/935.  
(c) 2004 c. 18.

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

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

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

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) 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, the provisions of Part 8 of Schedule 16 (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.

(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(b).

(8) In this article—

- (a) “drainage authority” means the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(c);
- (b) “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
- (c) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

### **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.

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(a) 1991 c. 56.  
(b) S.I. 2016/1154.  
(c) 1991 c. 59.  
(d) 1991 c. 57.

(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
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

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

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

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

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

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

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

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

### **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))—

- (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;
- (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.

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

(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 10 (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;
- (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<sup>(a)</sup>.

(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 West Burton Solar Project 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 West Burton Solar Project 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.

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

(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—

- (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 High Court in respect of compulsory purchase order), the three

year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the West Burton Solar Project Order 202[ ]”.

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

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

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 21 (time limit for exercise of authority to acquire land compulsorily) of the West Burton Solar Project Order 202[ ]”.

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

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

“(2) But see article 25(3) (acquisition of subsoil only) of the West Burton Solar Project 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 West Burton Solar Project 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 (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 the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (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 16 (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 16 (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) 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 paragraph (2) and 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) Paragraph (1) does not apply to Work No. 4 in respect of which the provisions of this Order are for the benefit of the undertaker and National Grid.

#### **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) [in respect of Work No. 5B, the transferee or lessee is the undertaker as defined in the Cottam Solar Project Park Order or the Gate Burton Energy Park Order;]
- (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.

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(a) 2003 c. 21.

(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;
- (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 or in connection with the authorised development and subject to paragraph (2) remove the hedgerows specified in column 2 of the table in Part 1, column 2 of the table in Part 2 and column 2 of the table in Part 3 of Schedule 13 (hedgerows to be removed).

(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.

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(a) S.I. 1997/1160.

### **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 14 (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 15 (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.

### **Protective provisions**

**43.** Schedule 16 (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 2, and subject to the conditions set out in Part 3, 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—

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

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
  - (b) in any other case, the last known address of that person at that time of service.
- (4) Where for the purpose of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
  - (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—
- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
  - (b) the notice or document is capable of being accessed by the recipient;
  - (c) the notice or document is legible in all material respects; and
  - (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
  - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.

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

- 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 17 (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 17 (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 17 (procedure for discharge of requirements) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 16 (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 16 (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 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	Parliamentary Under Secretary of State	<i>Name</i>
Date		Department

**Comment [ERR3]:**  
 Warning only Low impact [e00120]  
 NOT GLOBAL The signature date  
 has not yet been completed

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

**1. In this Schedule—**

“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 modules;

“National Grid West Burton substation” means the existing 400kV substation at West Burton Power Station, owned and operated by National Grid;

“solar module” 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 consumption;

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

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

In the District of West Lindsey in the County of Lincolnshire 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 four generating stations 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) **Work No. 1A**— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—
  - (i) solar modules fitted to mounting structures;
  - (ii) DC electrical cabling and combiner DC boxes;
  - (iii) conversion units including inverters, transformers, switchgear, and monitoring and control systems; and
  - (iv) electrical and communications cabling connecting Work No. 1A(iii) to Work No. 3A.
- (b) **Work No. 1B**— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—
  - (i) solar modules fitted to mounting structures;
  - (ii) DC electrical cabling and combiner DC boxes;
  - (iii) conversion units including inverters, transformers, switchgear, and monitoring and control systems; and
  - (iv) electrical and communications cabling connecting Work No. 1B(iii) to Work No. 3B.
- (c) **Work No. 1C**— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—
  - (i) solar modules fitted to mounting structures;
  - (ii) DC electrical cabling and combiner DC boxes;

- (iii) conversion units including inverters, transformers, switchgear, and monitoring and control systems; and
- (iv) electrical and communications cabling connecting Work No. 1C(iii) to Work No. 3C.

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

**Work No. 2**— an energy storage facility comprising—

- (a) battery energy storage cells with fire suppression system;
- (b) a structure protecting the battery energy storage cells comprised in Work No. 2(a) and ancillary equipment, being either one container or multiple containers joined to each other, mounted on a reinforced concrete foundation slab or concrete piling;
- (c) interconnection units including heating, ventilation and air conditioning or liquid cooling systems and temperature management either housed within the containers comprised in Work No. 2(b), attached to the side or top of each of the containers, or located separate from but near to each of the containers;
- (d) conversion units including inverters, transformers, switchgear and energy management system;
- (e) monitoring and control systems housed within a container with Work No. 2(c) or located separately in its own container or control room;
- (f) electrical cabling including electrical cables connecting Work No. 2 to Work No. 3C;
- (g) bunded impermeable surface to manage surface water drainage;
- (h) water storage facility for the purposes of firefighting water supply; and
- (i) bunded impermeable surface and associated infrastructure to contain used firewater.

**Work No. 3**— works in connection with onsite substations including—

- (a) **Work No. 3A**— a substation with works comprising—
  - (i) an up to 132kV substation, with associated transformer bays, feeder bays, transformers, switchgear buildings and ancillary equipment including reactive power units;
  - (ii) control building or container relay rooms with associated offices, storage and welfare facilities;
  - (iii) monitoring and control systems for Work Nos. 1A and 3A;
  - (iv) maintenance compound;
  - (v) electrical cabling; and
  - (vi) earthworks, including soil stripping and site levelling.
- (b) **Work No. 3B**— a substation with works comprising—
  - (i) an up to 132kV substation, with associated transformer bays, feeder bays, transformers, switchgear buildings and ancillary equipment including reactive power units;
  - (ii) control building or container relay rooms with associated offices, storage and welfare facilities;
  - (iii) monitoring and control systems for Work Nos. 1B and 3B;
  - (iv) maintenance compound;
  - (v) electrical cabling; and
  - (vi) earthworks, including soil stripping and site levelling.
- (c) **Work No. 3C**— a substation with works comprising—
  - (i) an up to 400kV substation, with associated transformer bays, feeder bays, transformers, switchgear buildings and ancillary equipment including reactive power units;

- (ii) control building or container relay rooms with associated offices, storage and welfare facilities;
- (iii) monitoring and control systems for Work Nos. 1C and 3C;
- (iv) maintenance compound;
- (v) electrical cabling; and
- (vi) earthworks, including soil stripping and site levelling.

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.

**Work No. 4**— works to the National Grid substation to facilitate connection of the authorised development to the National Grid including extending main busbar 4 and reserve busbar 3/4 gas zones to allow for the connection of a new GIS substation bay comprising—

- (a) a 400kV 3phase 4000A circuit breaker for control and protection of the outgoing circuit serving the authorised development;
- (b) a 3phase set of current transformers for protection of the new outgoing 400kV feeder circuit and the overlap with the National Grid system;
- (c) a 3phase high accuracy metering current and voltage transformer assembly for commercial metering of the connection;
- (d) a 3phase 400kV line disconnector/earth switch for isolation and earthing of the outgoing 400kV feeder circuit;
- (e) a 3phase set of 400kV high voltage cable sealing ends and cables connecting the National Grid substation with Work No. 5;
- (f) a 3phase power quality ready capacitor voltage transformer; and
- (g) provision of a stand-alone building to house duplicate feeder protection systems, commercial metering systems, protection and control equipment and user remote control and data acquisition apparatus.

**Work No. 5**— works in connection with electrical cabling including—

- (a) **Work No. 5A**— works to lay electrical cables, accesses, and temporary construction laydown areas for the electrical cables including—
  - (i) high voltage electrical cables connecting Work No. 3C to Work No. 4;
  - (ii) high voltage electrical cables connecting Work No. 3C to Work No. 3A;
  - (iii) high voltage electrical cables connecting Work No. 3C to Work No. 3B;
  - (iv) laying down of access tracks, ramps, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards;
  - (v) joint bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable marker, tiles and tape, communications chambers, fibre optic cables and lighting and other works associated with cable laying;
  - (vi) tunnelling, boring and drilling works; and
  - (vii) temporary construction laydown areas comprising—
    - (aa) areas of hardstanding, compacted ground or track matting;
    - (bb) car parking;
    - (cc) area to store materials and equipment;
    - (dd) site and welfare offices and workshops;
    - (ee) security infrastructure, including cameras, perimeter fencing and lighting;
    - (ff) safety infrastructure to manage traffic when crossing roads or other obstacles;
    - (gg) site drainage and waste management infrastructure (including sewerage); and

- (hh) electricity, water, waste water and telecommunications connections.
- (b) **Work No. 5B**— works to lay electrical cables, accesses, and temporary construction laydown areas for the electrical cables including—
  - (i) high voltage electrical cables connecting Work No. 3C to Work No. 4;
  - (ii) laying down of access tracks, ramps, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards;
  - (iii) joint bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable marker, tiles and tape, communications chambers, fibre optic cables and lighting and other works associated with cable laying.
  - (iv) tunnelling, boring and drilling works; and
  - (v) temporary construction laydown areas comprising—
    - (aa) areas of hardstanding, compacted ground or track matting;
    - (bb) car parking;
    - (cc) area to store materials and equipment;
    - (dd) site and welfare offices and workshops;
    - (ee) security infrastructure, including cameras, perimeter fencing and lighting;
    - (ff) safety infrastructure to manage traffic when crossing roads or other obstacles;
    - (gg) site drainage and waste management infrastructure (including sewerage); and
    - (hh) electricity, water, waste water and telecommunications connections.

**Work No. 6**— works including—

- (a) **Work No. 6A**— works including—
  - (i) fencing, gates, boundary treatment and other means of enclosure;
  - (ii) works for the provision of security and monitoring measures including CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure, and perimeter fencing;
  - (iii) landscaping and biodiversity mitigation and enhancement measures including planting;
  - (iv) improvement, maintenance and use of existing private tracks;
  - (v) laying down of internal access tracks, ramps, means of access and footpaths;
  - (vi) temporary footpath diversions;
  - (vii) earthworks;
  - (viii) sustainable drainage system ponds, runoff outfalls, general drainage and irrigation infrastructure and improvements or extensions to existing drainage and irrigation systems;
  - (ix) acoustic barriers;
  - (x) electricity and telecommunications connections; and
  - (xi) secondary temporary construction laydown areas.
- (b) **Work No. 6B**— works including—
  - (i) fencing, gates, boundary treatment and other means of enclosure;
  - (ii) works for the provision of security and monitoring measures including CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure, and perimeter fencing;
  - (iii) landscaping and biodiversity mitigation and enhancement measures including planting;
  - (iv) improvement, maintenance and use of existing private tracks;
  - (v) laying down of internal access tracks, ramps, means of access and footpaths;

- (vi) temporary footpath diversions;
  - (vii) earthworks;
  - (viii) sustainable drainage system ponds, runoff outfalls, general drainage and irrigation infrastructure and improvements or extensions to existing drainage and irrigation systems;
  - (ix) acoustic barriers;
  - (x) electricity and telecommunications connections; and
  - (xi) secondary temporary construction laydown areas.
- (c) **Work No. 6C**— works including—
- (i) fencing, gates, boundary treatment and other means of enclosure;
  - (ii) works for the provision of security and monitoring measures including CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure, and perimeter fencing;
  - (iii) landscaping and biodiversity mitigation and enhancement measures including planting;
  - (iv) improvement, maintenance and use of existing private tracks;
  - (v) laying down of internal access tracks, ramps, means of access and footpaths;
  - (vi) temporary footpath diversions;
  - (vii) earthworks;
  - (viii) sustainable drainage system ponds, runoff outfalls, general drainage and irrigation infrastructure and improvements or extensions to existing drainage and irrigation systems;
  - (ix) acoustic barriers;
  - (x) electricity and telecommunications connections; and
  - (xi) temporary construction laydown areas.

**Work No. 7**— temporary construction and decommissioning laydown areas including—

- (a) **Work No. 7A**— temporary construction and decommissioning laydown areas comprising—
- (i) areas of hardstanding;
  - (ii) car parking;
  - (iii) site and welfare offices and workshops;
  - (iv) security infrastructure, including cameras, perimeter fencing and lighting;
  - (v) area to store materials and equipment;
  - (vi) site drainage and waste management infrastructure (including sewerage); and
  - (vii) electricity, water, waste water and telecommunications connections.
- (b) **Work No. 7B**— temporary construction and decommissioning laydown area comprising—
- (i) areas of hardstanding;
  - (ii) car parking;
  - (iii) site and welfare offices and workshops;
  - (iv) security infrastructure, including cameras, perimeter fencing and lighting;
  - (v) area to store materials and equipment;
  - (vi) site drainage and waste management infrastructure (including sewerage); and
  - (vii) electricity, water, waste water and telecommunications connections.

- (c) **Work No. 7C**— temporary construction and decommissioning laydown area comprising—
  - (i) areas of hardstanding;
  - (ii) car parking;
  - (iii) site and welfare offices and workshops;
  - (iv) security infrastructure, including cameras, perimeter fencing and lighting;
  - (v) area to store materials and equipment;
  - (vi) site drainage and waste management infrastructure (including sewerage); and
  - (vii) electricity, water, waste water and telecommunications connections.

**Work No. 8**— works to facilitate access to Work Nos. 1 to 7 and 9 to 11 including—

- (a) **Work No. 8A**— works to facilitate temporary construction and decommissioning access to Work Nos. 1 to 7 and 9 to 11 including—
  - (i) creation of accesses from the public highway;
  - (ii) creation of visibility splays;
  - (iii) works to alter the layout of any street or highway temporarily; and
  - (iv) offsite works adjacent to highways land including those to structures, boundary features, drainage features on private land required for the facilitation of movement of abnormal indivisible loads associated with Work Nos. 3 and 5.
- (b) **Work No. 8B**— works to facilitate permanent access to Work Nos. 1 to 6 and 9 to 11 including—
  - (i) creation of accesses from the public highway;
  - (ii) creation of visibility splays; and
  - (iii) works to alter the layout of any street or highway permanently.

**Work No. 9**— works to create and maintain habitat management areas, including—

- (a) fencing, gates, boundary treatment and other means of enclosure;
- (b) earth works including bunds, embankments, ponds, trenching and swales;
- (c) landscaping and biodiversity mitigation and enhancement measures including planting;
- (d) means of access; and
- (e) drainage.

**Work No. 10**— works to create and maintain a habitat management area, comprising—

- (a) fencing, gates, boundary treatment and other means of enclosure;
- (b) landscaping and biodiversity mitigation and enhancement measures including planting;
- (c) improvement, maintenance and use of existing private tracks;
- (d) earthworks;
- (e) drainage; and
- (f) means of access.

**Work No. 11**— creation of a permissive footpath comprising—

- (a) creation of a permissive footpath from the track off Sykes Lane along the Codder Lane Belt and then south and west to re-join Sykes Lane opposite Hardwick Scrub;
- (b) fencing, gates, boundary treatment and other means of enclosure; and
- (c) landscaping and biodiversity mitigation and enhancement measures including planting.

In connection with and in addition to Work Nos. 1 to 11 further associated development within the Order limits including—

- (a) fencing, gates, boundary treatment and other means of enclosure;

- (b) bunds, embankments, trenching and swales;
- (c) works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- (d) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- (e) 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;
- (f) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (g) ramps, bridges and other means of access;
- (h) works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, lightning protection masts, weather stations, storage containers, communication infrastructure, and perimeter fencing;
- (i) improvement, maintenance and use of existing private tracks;
- (j) temporary footpath diversions and footpath enhancement;
- (k) landscaping and related works;
- (l) habitat creation and enhancement;
- (m) 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;
- (n) works to maintain and repair streets and access roads;
- (o) tunnelling, boring and drilling works; and
- (p) 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

Article 3

### **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 both 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 authorised development unless otherwise agreed with the relevant planning authorities.

### **Detailed design approval**

5.—(1) No part of Work Nos. 1, 2 or 3 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;  
relating to that part have been submitted and approved by the relevant planning authority for that part.

(2) The details submitted must accord with the concept design parameters and 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 storage safety management plan has been submitted to and approved by the relevant planning authority.

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

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

(4) 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 mitigation 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 mitigation plan must be substantially in accordance with the outline landscape and ecological mitigation plan.

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

#### **Ecological protection and mitigation strategy**

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

(2) The ecological protection and mitigation strategy must be substantially in accordance with the outline ecological protection and mitigation strategy.

(3) The ecological protection and mitigation strategy must be implemented as approved.

#### **Biodiversity net gain**

9.—(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 implemented as approved.

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

10.—(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 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) The written details provided under sub-paragraph (2) must be substantially in accordance with the relevant concept design parameters and principles.

(4) Any approved permanent fencing for a part of the authorised development must be completed before the date of final commissioning in respect of that part.

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

**11.**—(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 for that part have been submitted to and approved by the relevant planning authority.

(2) The written details under sub-paragraph (1) must be substantially in accordance with the outline drainage strategy.

(3) Before approving the written details under sub-paragraph (1) the relevant planning authority must consult with Anglian Water Services Limited.

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

### **Archaeology**

**12.** The authorised development must be implemented in accordance with the written scheme of investigation.

### **Construction environmental management plan**

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

(2) The construction environmental management plan must be substantially in accordance with the outline construction environmental management plan.

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

### **Operational environmental management plan**

**14.**—(1) Prior to the date of final commissioning for any part of the authorised development, an operational environmental management plan for that part must be 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) The operational environmental management plan must be substantially in accordance with the outline operational environmental management plan.

(3) The operational environmental management plan must be implemented as approved.

### **Construction traffic management plan**

**15.**—(1) No part of the authorised development may commence until a construction traffic management plan for that part must be 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) The construction traffic management plan must be substantially in accordance with the outline construction traffic management plan.

(3) Before approving the construction traffic management plan the relevant planning authority must consult with the relevant highway authority and in respect of Work No. 1C with Network Rail.

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

### **Operational noise**

**16.**—(1) No part of Work Nos. 1, 2, or 3 may commence until an operational noise assessment containing details of how the design of that numbered work has incorporated the operational mitigation measures set out in Section 15.6 of Chapter 15 of the environmental statement for that part has been submitted to and approved by the relevant planning authority.

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

### **Permissive paths**

**17.**—(1) Work No. 11 must be provided and open to the public prior to the date of final commissioning of Work No. 1B.

(2) The permissive path must be maintained and access by the public permitted for 364 days a year except where closure is required for maintenance or in an emergency until commencement of decommissioning of the authorised development pursuant to requirement 21.

### **Public rights of way**

**18.**—(1) No part of the authorised development may commence until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the public rights of way 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.

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

(3) Before approving the public rights of way management plan the relevant planning authority must consult with the relevant highway authority.

(4) The public rights of way management plan must be implemented as approved.

### **Soils management**

**19.**—(1) No part of the authorised development may commence until a soils resource 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 planning authorities, each of the relevant planning authorities.

(2) Any soils resource management plan submitted in accordance with this paragraph must be substantially in accordance with the outline soils resource management plan as relevant to the activities to which it relates.

(3) The soils resource management plan must be implemented as approved.

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

**20.**—(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**

**21.**—(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 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 plan must be substantially in accordance with the outline decommissioning statement.

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

(5) The decommissioning 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) Great Northern Railway (Doncaster to Gainsborough) Act 1864**(e)**
- (f) Trent (Burton on Trent and Humber) Navigation Act 1887**(f)**
- (g) Trent Navigation Act 1906**(g)**
- (h) Great Central Railway Act 1907**(h)**
- (i) Lincolnshire Rivers Fisheries Provisional Order Confirmation Act 1928**(i)**
- (j) Trent and Lincolnshire Water Act 1971**(j)**
- (k) Anglian Water Authority Act 1977**(k)**

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- (a)** 1845 c. 1.
  - (b)** 1846 c. lxxi.
  - (c)** 1846 c. ccciv.
  - (d)** 1847 c. cxc.
  - (e)** 1864 c. ccxliii.
  - (f)** 1887 c. cxv.
  - (g)** 1906 c. lvii.
  - (h)** 1907 c. lxxviii.
  - (i)** 1928 c. lxxvii.
  - (j)** 1971 c. xiii.
  - (k)** 1977 c. i.

SCHEDULE 4

Article 8

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Extent of the street works</i>
District of West Lindsey	Main street	Main street as shown between points 1a and 1b and shaded purple on sheet 1 of the streets plan
District of West Lindsey	Main street	Main street as shown between points 1b and 1c and shaded purple on sheet 1 of the streets plan
District of West Lindsey	Main street	Main street as shown between points 1c and 1d and shaded purple on sheet 1 of the streets plan
District of West Lindsey	Sturton Road (B1241)	Sturton Road (B1241) as shown between points 2a and 2b and shaded purple on sheet 2 of the streets plan
District of West Lindsey	Sturton Road (B1241)	Sturton Road (B1241) as shown between points 2c and 2d and shaded purple on sheet 2 of the streets plan
District of West Lindsey	Sturton Road (B1241)	Sturton Road (B1241) as shown between points 2d and 2e and shaded purple on sheet 2 of the streets plan
District of West Lindsey	Sturton Road (B1241)	Sturton Road (B1241) as shown between points 4a and 4b and shaded purple on sheet 4 of the streets plan
District of West Lindsey	Cowdale Lane	Cowdale Lane as shown between points 5a and 4c and shaded purple on sheets 4 and 5 of the streets plan
District of West Lindsey	Stow Park Road	Stow Park Road as shown between points 6a and 6b and shaded purple on sheet 6 of the streets plan
District of West Lindsey	Till Bridge Lane	Till Bridge Lane as shown between points 6c and 6e and shaded purple on sheet 6 of the streets plan
District of West Lindsey	Stow Park Road	Stow Park Road as shown between points 6d and 6f and shaded purple on sheet 6 of the streets plan
District of West Lindsey	Stow Park Road	Stow Park Road as shown between points 7a and 7b and shaded purple on sheet 7 of the

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		streets plan
District of West Lindsey	High street (A156)	High street (A156) as shown between points 7c and 7d and shaded purple on sheet 7 of the streets plan
District of West Lindsey	Stow Park Road (A1500)	Stow Park Road (A1500) as shown between points 7e and 7f and shaded purple on sheet 7 of the streets plan
District of West Lindsey	High Street, Marton	High Street, Marton as shown between points 7g and 7h and shaded purple on sheet 7 of the streets plan
District of West Lindsey	High Street, Marton	High Street, Marton as shown between points 7h and 7i and shaded purple on sheet 7 of the streets plan
District of West Lindsey	Lea Road, Brampton (A156)	Lea Road, Brampton (A156) as shown between points 7j and 7k and shaded purple on sheet 7 of the streets plan
District of Bassetlaw	Coates Road	Coates Road as shown between points 8a and 8b and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	Coates Road	Coates Road as shown between points 8b and 8c and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	Coates Road	Coates Road as shown between points 8c and 8d and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	Headstead Bank	Headstead Bank as shown between points 8d and 8e and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	North Leys Road	North Leys Road as shown between points 8f and 8g and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	Coates Road	Coates Road as shown between points 8g and 8h and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	Northfield Road	Northfield Road as shown between points 9a and 9b and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Northfield Road	Northfield Road as shown between points 9b and 9c and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Northfield Road	Northfield Road as shown between points 9c and 9d and

		shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Fenton Lane	Fenton Lane as shown between points 9e and 9f and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Fenton Lane	Fenton Lane as shown between points 9f and 9g and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Littleborough Road	Littleborough Road as shown between points 9h and 9i and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Littleborough Road	Littleborough Road as shown between points 9i and 9j and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Littleborough Road	Littleborough Road as shown between points 9j and 9k and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Upper Ings Lane	Upper Ings Lane as shown between points 9l and 9m and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Upper Ings Lane	Upper Ings Lane as shown between points 9m and 9n and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	North Street	North Street as shown between points 10a and 10b and shaded purple on sheet 10 of the streets plan
District of Bassetlaw	Common Lane	Common Lane as shown between points 10b and 10c and shaded purple on sheet 10 of the streets plan
District of Bassetlaw	Common Lane	Common Lane as shown between points 10d and 10e and shaded purple on sheet 10 of the streets plan
District of Bassetlaw	Gainsborough Road	Gainsborough Road as shown between points 10f and 10g and shaded purple on sheet 10 of the streets plan

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	Main street	Permanent alteration of layout between reference points 1a and 1b, and 1c and 1d and shaded purple on sheet 1 of the streets plan
District of West Lindsey	Sturton Road (B1241)	Permanent alteration of layout between reference points 2a and 2b, and 2d and 2e on sheet 2, and reference points 4a and 4b and shaded purple on sheet 4 of the streets plan
District of West Lindsey	Stow Park Road	Permanent alteration of layout between reference points 6a and 6b, and 6d of 6f on sheet 6 and reference points 7a and 7b, and 7e and 7f and shaded purple on sheet 7 of the streets plan
District of West Lindsey	Till Bridge Lane	Permanent alteration of layout between reference points 6c and 6e and shaded purple on sheet 6 of the streets plan
District of West Lindsey	High street (A156)	Permanent alteration of layout between reference points 7c and 7d and shaded purple on sheet 7 of the streets plan
District of West Lindsey	High Street, Marton	Permanent alteration of layout between reference points 7g and 7h and shaded purple on sheet 7 of the streets plan
District of West Lindsey	Lea Road, Brampton (A156)	Permanent alteration of layout between reference points 7j and 7k and shaded purple on sheet 7 of the streets plan
District of Bassetlaw	Coates Road	Permanent alteration of layout between reference points 8a and 8b, 8c and 8d, and 8g and 8h and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	Headstead Bank	Permanent alteration of layout between reference points 8d and 8e and shaded purple on sheet 8 of the streets plan

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District of Bassetlaw	North Leys Road	Permanent alteration of layout between reference points 8f and 8g and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	Northfield Road	Permanent alteration of layout between reference points 9a and 9b, and 9c and 9d and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Fenton Lane	Permanent alteration of layout between reference points 9e and 9f and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Littleborough Road	Permanent alteration of layout between reference points 9h and 9i, and 9j and 9k and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Upper Ings Lane	Permanent alteration of layout between reference points 9l and 9m and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	North Street	Permanent alteration of layout between reference points 10a and 10b and shaded purple on sheet 10 of the streets plan
District of Bassetlaw	Common Lane	Permanent alteration of layout between reference points 10b and 10c and shaded purple on sheet 10 of the streets plan
District of Bassetlaw	Gainsborough Road	Permanent alteration of layout between reference points 10f and 10 g and shaded purple on sheet 10 of the streets plan

**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	Main street	Temporary alteration of layout between reference 1b and 1c and shaded purple on sheet 1 of the streets plan
District of West Lindsey	Sturton Road (B1241)	Temporary alteration of layout between reference 2c and 2d and shaded purple on sheet 2 of the streets plan
District of West Lindsey	Cowdale Lane	Temporary alteration of layout between reference 5a and 4c and shaded purple on sheets 4 and 5 of the streets plan
District of West Lindsey	High Street, Marton	Temporary alteration of layout

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		between reference 7h and 7i and shaded purple on sheet 7 of the streets plan
District of Bassetlaw	Coates Road	Temporary alteration of layout between reference 8b and 8c and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	Northfield Road	Temporary alteration of layout between reference 9b and 9c and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Fenton Lane	Temporary alteration of layout between reference 9f and 9g and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Littleborough Road	Temporary alteration of layout between reference 9i and 9j and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Upper Ings Lane	Temporary alteration of layout between reference 9m and 9n and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Common Lane	Temporary alteration of layout between reference 10d and 10e and shaded purple on sheet 10 of the streets plan

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>Measure</i>
District of West Lindsey	Main Street	Approximately 647 metres of Main Street as shown between points 1b and 1c and coloured green on sheet 1 of the streets to be stopped up plan
District of West Lindsey	Sturton Road (B1241)	Approximately 523 metres of Sturton Road (B1241) as shown between points 2c and 2d and coloured green on sheet 2 of the streets to be stopped up plan
District of West Lindsey	Cowdale Lane	Approximately 744 metres of Cowdale Lane as shown between points 5a and 4c and coloured green on sheet 5 of the streets to be stopped up plan
District of West Lindsey	High Street, Marton	Approximately 241 metres of High Street, Marton as shown between points 7h and 7i and coloured green on sheet 7 of the streets to be stopped up plan
District of Bassetlaw	Coates Road	Approximately 54 metres of Coates Road as shown between points 8b and 8c and coloured green on sheet 8 of the streets to be stopped up plan
District of Bassetlaw	Northfield Road	Approximately 55 metres of Northfield Road as shown between points 9b and 9c and coloured green on sheet 9 of the streets to be stopped up plan
District of Bassetlaw	Fenton Lane	Approximately 55 metres of Fenton Lane as shown between points 9f and 9g and coloured green on sheet 9 of the streets to be stopped up plan
District of Bassetlaw	Littleborough Road	Approximately 107 metres of Littleborough Road as shown

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		between points 9i and 9j and coloured green on sheet 9 of the streets to be stopped up plan
District of Bassetlaw	Upper Ings Lane	Approximately 62 metres of Upper Ings Lane as shown between points 9m and 9n and coloured green on sheet 9 of the streets to be stopped up plan
District of Bassetlaw	Common Lane	Approximately 57 metres of Common Lane as shown between points 10d and 10e and coloured green on sheet 10 of the streets to be stopped up plan

## 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	Approximately 159 metres of Footpath reference 1i - Brox/196/1 between points marked 1i/a and 1i/b on sheet 1 of the public rights of way plan	Temporarily closed along a route shown in yellow and diverted along a route contained within the diversion area shown hatched brown on sheet 1 of the public rights of way plan to facilitate the construction of the authorised development.
District of West Lindsey	Approximately 201 metres of Footpath reference 7i - Mton/68/1 between points marked 7i/a and 7i/b on sheet 7 of the public rights of way plan	Temporarily closed along a route shown in yellow and diverted along a route contained within the diversion area shown hatched brown on sheet 7 of the public rights of way plan to facilitate the construction of the authorised development.

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## PART 3

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

<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	Approximately 580 metres of Footpath reference 7ii - Bram/66/1 between points	Temporarily closed along the route shown in orange and labelled Bram/66/1

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	marked 7ii/a and 7ii/b on sheet 7 of the public rights of way plan	
District of West Lindsey	Approximately 129 metres of Footpath reference 7iii - Mton/66/4 between points marked 7iii/a and 7iii/b on sheet 7 of the public rights of way plan	Temporarily closed along the route shown in orange and labelled Mton/66/4
District of Bassetlaw	Approximately 187 metres of Footpath reference 7iv - NT\Cottam\FP1 between points marked 7iv/a and 7iv/b on sheet 7 of the public rights of way plan	Temporarily closed along the route shown in orange and labelled NT\Cottam\FP1
District of Bassetlaw	Approximately 32 metres of Footpath reference 7v - NT\North Leverton With Hablesthorpe\FP9 between points marked 7v/a and 7v/b on sheet 7 of the public rights of way plan	Temporarily closed along the route shown in orange and labelled NT\North Leverton With Hablesthorpe\FP9
District of Bassetlaw	Approximately 3 metres of Byway reference 8i - NT\North Leverton With Hablesthorpe\RB25 between points marked 8i/a and 8i/b on sheet 8 of the public rights of way plan	Temporarily closed along the route shown in pink and labelled NT\North Leverton With Hablesthorpe\RB25
District of Bassetlaw	Approximately 201 metres of BOAT reference 8ii - NT\North Leverton With Hablesthorpe\BOAT14 between points marked 8ii/a and 8ii/b on sheet 8 of the public rights of way plan	Temporarily closed along the route shown in blue and labelled NT\North Leverton With Hablesthorpe\BOAT14
District of Bassetlaw	Approximately 51 metres of Footpath reference 9i - NT\North Leverton With Hablesthorpe\FP18 between points marked 9i/a and 9i/b on sheet 9 of the public rights of way plan	Temporarily closed along the route shown in orange and labelled NT\North Leverton With Hablesthorpe\FP18
District of Bassetlaw	Approximately 354 metres of Bridleway reference 9ii - NT\Sturton Le Steeple\BW5 between points marked 9ii/a and 9ii/b on sheet 9 of the public rights of way plan	Temporarily closed along the route shown in green and labelled NT\Sturton Le Steeple\BW5
District of Bassetlaw	Approximately 75 metres of Byway reference 9iii - NT\Sturton Le Steeple\RB32 between points marked 9iii/a and 9iii/b on sheet 9 of the public rights of way plan	Temporarily closed along the route shown in pink and labelled NT\Sturton Le Steeple\RB32
District of Bassetlaw	Approximately 56 metres of	Temporarily closed along the

	Byway reference 10i - NT Sturton Le Steeple RB32 between points marked 10i/a and 10i/b on sheet 10 of the public rights of way plan	route shown in pink and labelled NT Sturton Le Steeple RB32
District of Bassetlaw	Approximately 55 metres of Footpath reference 10ii - NT Sturton Le Steeple FP39 between points marked 10ii/a and 10ii/b on sheet 10 of the public rights of way plan	Temporarily closed along the route shown in orange and labelled NT Sturton Le Steeple FP39
District of Bassetlaw	Approximately 63 metres of Footpath reference 10iii - NT Sturton Le Steeple FP15 between points marked 10iii/a and 10iii/b on sheet 10 of the public rights of way plan	Temporarily closed along the route shown in orange and labelled NT Sturton Le Steeple FP15
District of Bassetlaw	Approximately 404 metres of Byway reference 10iv - NT Sturton Le Steeple RB32 between points marked 10iv/a and 10iv/b on sheet 10 of the public rights of way plan	Temporarily closed along the route shown in pink and labelled NT Sturton Le Steeple RB32
District of Bassetlaw	Approximately 9 metres of Footpath reference 10v - NT Sturton Le Steeple FP17 between points marked 10v/a and 10v/b on sheet 10 of the public rights of way plan	Temporarily closed along the route shown in orange and labelled NT Sturton Le Steeple FP17
District of Bassetlaw	Approximately 306 metres of Footpath reference 10v - NT Sturton Le Steeple FP17 between points marked 10v/c and 10v/d on sheet 10 of the public rights of way plan	Temporarily closed along the route shown in orange and labelled NT Sturton Le Steeple FP17
District of Bassetlaw	Approximately 23 metres of Footpath reference 10v - NT Sturton Le Steeple FP17 between points marked 10v/e and 10v/f on sheet 10 of the public rights of way plan	Temporarily closed along the route shown in orange and labelled NT Sturton Le Steeple FP17

SCHEDULE 7  
ACCESS TO WORKS

Article 13

PART 1  
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	Unclassified road, 880m south of A1500 junction	The provision of a permanent means of access to the authorised development from the point marked AC1 on sheet 1 of the access to works plan.
District of West Lindsey	Unclassified road, 1200m south of A1500 junction	The provision of a permanent means of access to the authorised development from the point marked AC2 on sheet 1 of the access to works plan.
District of West Lindsey	B1241 (Sturton Road)	The provision of a temporary means of access to the authorised development from the point marked AC119 on sheet 1 of the access to works plan.
District of West Lindsey	B1241 (Sturton Road)	The provision of a permanent means of access to the authorised development from the point marked AC4 on sheet 3 of the access to works plan.
District of West Lindsey	B1241 (Sturton Road)	The provision of a permanent means of access to the authorised development from the point marked AC6 on sheet 3 of the access to works plan.
District of West Lindsey	Sykes Lane	The provision of a permanent means of access to the authorised development from the point marked AC116 on sheet 3 of the access to works plan.
District of West Lindsey	A1500	The provision of a permanent means of access to the authorised development from the point marked AC5 on sheet 4 of the access to works plan.
District of West Lindsey	A1500	The provision of a temporary means of access to the authorised development from the point marked AC114 on sheet 4 of the access to works plan.

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District of Bassetlaw	Gainsborough Road	The provision of a permanent means of access to the authorised development from the point marked AC115 on sheet 4 of the access to works plan.
District of Bassetlaw	Common Lane	The provision of a temporary means of access to the authorised development from the point marked AC7 on sheet 6 of the access to works plan.
District of Bassetlaw	Littleborough Road	The provision of a temporary means of access to the authorised development from the point marked AC113 on sheet 6 of the access to works plan.
District of Bassetlaw	Three Leys Lane/Fenton Lane	The provision of a temporary means of access to the authorised development from the point marked AC109 on sheet 7 of the access to works plan.
District of Bassetlaw	Northfield Road (north)	The provision of a permanent means of access to the authorised development from the point marked AC110 on sheet 7 of the access to works plan.
District of Bassetlaw	Northfield Road (south)	The provision of a permanent means of access to the authorised development from the point marked AC105 on sheet 8 of the access to works plan.
District of Bassetlaw	Coates Road	The provision of a temporary means of access to the authorised development from the point marked AC106 on sheet 8 of the access to works plan.
District of Bassetlaw	Headstead Bank/Coates Road	The provision of a permanent means of access to the authorised development from the point marked AC108 on sheet 8 of the access to works plan.
District of Bassetlaw	A156	The provision of a permanent means of access to the authorised development from the point marked AC101 on sheet 10 of the access to works plan.

**PART 2**  
**TEMPORARY MEANS OF ACCESS**

<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	A156	The provision of a permanent means of access to the authorised development from the point marked AC118 on sheet 1 of the access to works plan.
District of West Lindsey	A156	The provision of a temporary means of access to the authorised development from the point marked AC3 on sheet 2 of the access to works plan.
District of West Lindsey	A1500 Stow Park Road	The provision of a temporary means of access to the authorised development from the point marked AC117 on sheet 2 of the access to works plan.
District of West Lindsey	A1500 Stow Park Road	The provision of a permanent means of access to the authorised development from the point marked AC8 on sheet 6 of the access to works plan.
District of West Lindsey	Cowdale Lane (north)	The provision of a permanent means of access to the authorised development from the point marked AC112 on sheet 6 of the access to works plan.
District of West Lindsey	Cowdale Lane (south)	The provision of a permanent means of access to the authorised development from the point marked AC111 on sheet 7 of the access to works plan.
District of West Lindsey	Sturton Road	The provision of a permanent means of access to the authorised development from the point marked AC107 on sheet 8 of the access to works plan.
District of West Lindsey	Sturton Road	The provision of a temporary means of access to the authorised development from the point marked AC103 on sheet 9 of the access to works plan.
District of West Lindsey	Unclassified road south of the A1500	The provision of a temporary means of access to the authorised development from the point marked AC104 on

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		sheet 9 of the access to works plan.
District of West Lindsey	Unclassified road south of the A1500	The provision of a permanent means of access to the authorised development from the point marked AC102 on sheet 10 of the access to works plan.

SCHEDULE 8

Article 15

TRAFFIC REGULATION MEASURES

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Extent of the street works</i>
District of West Lindsey	Main Street	Main Street as shown between points 1a and 1b and shaded purple on sheet 1 of the streets plan
District of West Lindsey	Main Street	Main Street as shown between points 1b and 1c and shaded purple on sheet 1 of the streets plan
District of West Lindsey	Main Street	Main Street as shown between points 1c and 1d and shaded purple on sheet 1 of the streets plan
District of West Lindsey	Sturton Road (B1241)	Sturton Road (B1241) as shown between points 2a and 2b and shaded purple on sheet 2 of the streets plan
District of West Lindsey	Sturton Road (B1241)	Sturton Road (B1241) as shown between points 2c and 2d and shaded purple on sheet 2 of the streets plan
District of West Lindsey	Sturton Road (B1241)	Sturton Road (B1241) as shown between points 2d and 2e and shaded purple on sheet 2 of the streets plan
District of West Lindsey	Sturton Road (B1241)	Sturton Road (B1241) as shown between points 4a and 4b and shaded purple on sheet 4 of the streets plan
District of West Lindsey	Cowdale Lane	Cowdale Lane as shown between points 5a and 4c and shaded purple on sheets 4 and 5 of the streets plan
District of West Lindsey	Stow Park Road	Stow Park Road as shown between points 6a and 6b and shaded purple on sheet 6 of the streets plan
District of West Lindsey	Till Bridge Lane	Till Bridge Lane as shown between points 6c and 6e and shaded purple on sheet 6 of the streets plan
District of West Lindsey	Stow Park Road	Stow Park Road as shown between points 6d and 6f and shaded purple on sheet 6 of the streets plan
District of West Lindsey	Stow Park Road	Stow Park Road as shown between points 7a and 7b and shaded purple on sheet 7 of the

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		streets plan
District of West Lindsey	High street (A156)	High street (A156) as shown between points 7c and 7d and shaded purple on sheet 7 of the streets plan
District of West Lindsey	Stow Park Road (A1500)	Stow Park Road (A1500) as shown between points 7e and 7f and shaded purple on sheet 7 of the streets plan
District of West Lindsey	High Street, Marton	High Street, Marton as shown between points 7g and 7h and shaded purple on sheet 7 of the streets plan
District of West Lindsey	High Street, Marton	High Street, Marton as shown between points 7h and 7i and shaded purple on sheet 7 of the streets plan
District of West Lindsey	Lea Road, Brampton (A156)	Lea Road, Brampton (A156) as shown between points 7j and 7k and shaded purple on sheet 7 of the streets plan
District of Bassetlaw	Coates Road	Coates Road as shown between points 8a and 8b and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	Coates Road	Coates Road as shown between points 8b and 8c and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	Coates Road	Coates Road as shown between points 8c and 8d and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	Headstead Bank	Headstead Bank as shown between points 8d and 8e and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	North Leys Road	North Leys Road as shown between points 8f and 8g and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	Coates Road	Coates Road as shown between points 8g and 8h and shaded purple on sheet 8 of the streets plan
District of Bassetlaw	Northfield Road	Northfield Road as shown between points 9a and 9b and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Northfield Road	Northfield Road as shown between points 9b and 9c and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Northfield Road	Northfield Road as shown between points 9c and 9d and

		shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Fenton Lane	Fenton Lane as shown between points 9e and 9f and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Fenton Lane	Fenton Lane as shown between points 9f and 9g and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Littleborough Road	Littleborough Road as shown between points 9h and 9i and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Littleborough Road	Littleborough Road as shown between points 9i and 9j and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Littleborough Road	Littleborough Road as shown between points 9j and 9k and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Upper Ings Lane	Upper Ings Lane as shown between points 9l and 9m and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	Upper Ings Lane	Upper Ings Lane as shown between points 9m and 9n and shaded purple on sheet 9 of the streets plan
District of Bassetlaw	North Street	North Street as shown between points 10a and 10b and shaded purple on sheet 10 of the streets plan
District of Bassetlaw	Common Lane	Common Lane as shown between points 10b and 10c and shaded purple on sheet 10 of the streets plan
District of Bassetlaw	Common Lane	Common Lane as shown between points 10d and 10e and shaded purple on sheet 10 of the streets plan
District of Bassetlaw	Gainsborough Road	Gainsborough Road as shown between points 10f and 10g and shaded purple on sheet 10 of the streets plan

## DEEMED MARINE LICENCE UNDER THE 2009 ACT

## PART 1

## LICENSED MARINE ACTIVITIES

## 1.—(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 West Burton Solar Project Order 202[ ];

“undertaker” means West Burton Solar Project Limited (company number 13049324);

“Work No. 6B” means the work of that description in Schedule 1 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.

(2) 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.

## (3) 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.consents@marinemanagement.org.uk](mailto:marine.consents@marinemanagement.org.uk) or where contact to the local MMO office is required is [beverley@marinemanagement.org.uk](mailto:beverley@marinemanagement.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 any licensable marine activities under section 66(1) 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—

Work No. 6B— works to lay electrical cables, accesses, and temporary construction laydown areas for the electrical cables including—

- (a) high voltage electrical cables connecting Work No. 4A to Work No. 5;
- (b) laying down of access tracks, ramps, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards;
- (c) joint bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable marker, tiles and tape, and lighting and other works associated with cable laying;
- (d) tunnelling, boring and drilling works; and
- (e) temporary construction laydown areas comprising—
  - (i) areas of hardstanding, compacted ground or track matting;
  - (ii) car parking;
  - (iii) area to store materials and equipment;
  - (iv) site and welfare offices and workshops;
  - (v) security infrastructure, including cameras, perimeter fencing and lighting;
  - (vi) safety infrastructure to manage traffic when crossing roads or other obstacles;
  - (vii) site drainage and waste management infrastructure (including sewerage); and
  - (viii) electricity, water, waste water and telecommunications connections.

(3) The activity set out in sub-paragraph (2) is authorised in relation to the construction, maintenance and operation of those elements of Work No. 6B of Schedule 1 (authorised development) of the 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. 6B, 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. 6B are specified below—

<i>Work area</i>	<i>Easting</i>	<i>Northing</i>
[TBC]	[TBC]	[TBC]

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(2) The coordinates in 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 rise 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@marinemanagement.org.uk](mailto:dispersants@marinemanagement.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.

SCHEDULE 10

Article 22

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<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>
02-033, 04-039, 04-040, 04-043a, 05-062, 06-065, 06-068, 06-069, 06-072, 06-073, 06-074, 06-076, 06-077, 06-078, 07-107, 07-108, 07-109, 09-168, 09-169, 10-187, 10-188, 10-189	<p>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;</p> <p>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;</p> <p>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;</p> <p>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;</p> <p>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.</p>
01-008, 01-013, 01-014, 01-018, 01-019, 01-020, 02-027, 02-028, 02-029, 02-030, 02-033, 04-039, 04-040, 04-043a, 04-044, 04-046, 04-047, 04-049, 04-050, 04-051, 04-052, 05-053, 05-062, 05-063a, 06-065, 06-068, 06-069, 06-072, 06-073, 06-074, 06-076, 07-094, 07-095, 07-096, 07-097, 07-098, 07-102, 07-103, 07-104, 07-105, 07-106, 07-114,	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,

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<p>07-114a, 07-115, 07-116, 07-117, 07-118, 07-119, 07-119a, 07-120, 07-120a, 07-121, 07-123, 08-124, 08-125, 08-126, 08-127, 08-128, 08-130, 08-133, 08-134, 08-135, 08-136, 08-137, 08-138, 08-139, 08-140, 08-151, 08-152, 08-153, 08-154, 08-156, 08-158, 08-159, 08-160, 09-161, 09-162, 09-165, 09-170, 09-171, 09-172, 09-173, 10-174, 10-175, 10-176, 10-177, 10-179, 10-180, 10-181, 10-182, 10-183, 10-184, 10-185</p>	<p>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;</p> <p>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;</p> <p>continuous vertical and lateral support for the authorised development;</p> <p>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;</p> <p>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;</p> <p>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;</p> <p>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.</p>
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**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 10 to the West Burton Solar Project Order 202[ ];
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 10 to the West Burton Solar Project Order [20\*\*]) 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)—

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

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(a) 1973 c. 26.

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(a) (powers of entry) 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(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) 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 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.

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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 1958 (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) 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 sections 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.
  - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).
  - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(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 West Burton Solar Project 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 West Burton Solar Project Order 202[ ] which excludes the acquisition of subsoil only from this Schedule.

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

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

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

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

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

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

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

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

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

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

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

#### **Determination by the Upper Tribunal**

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

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

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

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

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

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

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

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

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

SCHEDULE 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>
01-001, 01-002, 01-003, 01-004, 01-005, 01-006, 01-007, 01-016, 01-017, 02-025, 02-026, 02-032, 04-038, 04-043, 04-045, 04-048, 06-070, 06-071, 06-080, 06-081, 06-082, 06-083, 06-084, 06-085, 06-086, 06-087, 06-093, 07-099, 07-100, 07-101, 07-110, 07-111, 07-112, 07-113, 08-129, 08-132, 08-141, 08-142, 08-143, 08-144, 08-145, 08-146, 08-147, 08-148, 08-149, 08-150, 08-155, 08-157, 09-163, 09-164, 09-166, 10-178, 10-190, 10-191, 10-192, 10-193, 10-194, 10-195, 10-196, 10-197, 10-198, 10-199	Temporary use (including access) to facilitate the construction of Work Nos. 1 to 11.
01-015, 05-054, 07-122, 08-131, 08-142, 09-163, 09-167	Temporary use (including access and compound) to facilitate the construction of Work No. 5.

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SCHEDULE 13

Article 38

HEDGEROWS TO BE REMOVED

PART 1

REMOVAL OF HEDGEROWS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of hedgerow and extent of removal</i>
District of West Lindsey	Removal of approximately 91.22m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H001
District of West Lindsey	Removal of approximately 649.86m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H003
District of West Lindsey	Removal of approximately 311.16m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H012
District of West Lindsey	Removal of approximately 583.08m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H013
District of West Lindsey	Removal of approximately 412.56m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H014
District of West Lindsey	Removal of approximately 599.31m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H015
District of West Lindsey	Removal of approximately 328.86m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H016
District of West Lindsey	Removal of approximately 323.74m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H017
District of West Lindsey	Removal of approximately 615.78m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H018
District of West Lindsey	Removal of approximately 400.96m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H019
District of West Lindsey	Removal of approximately 207.6m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H020

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District of West Lindsey	Removal of approximately 163.98m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H021
District of West Lindsey	Removal of approximately 199.51m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H022
District of West Lindsey	Removal of approximately 179.63m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H023
District of West Lindsey	Removal of approximately 178.69m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H024
District of West Lindsey	Removal of approximately 162.29m of hedgerow within the area identified by a green line on sheet 1 of the hedgerows plan, reference H030
District of West Lindsey	Removal of approximately 96.68m of hedgerow within the area identified by a green line on sheet 2 of the hedgerows plan, reference H032
District of West Lindsey	Removal of approximately 274.76m of hedgerow within the area identified by a green line on sheet 2 of the hedgerows plan, reference H033
District of West Lindsey	Removal of approximately 263.57m of hedgerow within the area identified by a green line on sheet 2 of the hedgerows plan, reference H034
District of West Lindsey	Removal of approximately 575.38m of hedgerow within the area identified by a green line on sheet 2 of the hedgerows plan, reference H036
District of West Lindsey	Removal of approximately 260.06m of hedgerow within the area identified by a green line on sheet 2 of the hedgerows plan, reference H041
District of West Lindsey	Removal of approximately 252.21m of hedgerow within the area identified by a green line on sheet 2 of the hedgerows plan, reference H043
District of West Lindsey	Removal of approximately 270.61m of hedgerow within the area identified by a green line on sheet 2 of the hedgerows plan, reference H044
District of West Lindsey	Removal of approximately 181.06m of hedgerow within the area identified by a green line on sheet 2 of the hedgerows plan, reference H045
District of West Lindsey	Removal of approximately 130.28m of hedgerow within the area identified by a green line on sheet 4 of the hedgerows plan, reference H063

District of West Lindsey	Removal of approximately 204.33m of hedgerow within the area identified by a green line on sheet 4 of the hedgerows plan, reference H066
District of West Lindsey	Removal of approximately 214.37m of hedgerow within the area identified by a green line on sheet 4 of the hedgerows plan, reference H070
District of West Lindsey	Removal of approximately 252.39m of hedgerow within the area identified by a green line on sheet 4 of the hedgerows plan, reference H074b
District of West Lindsey	Removal of approximately 57.54m of hedgerow within the area identified by a green line on sheet 4 of the hedgerows plan, reference H075
District of West Lindsey	Removal of approximately 188.06m of hedgerow within the area identified by a green line on sheet 4 of the hedgerows plan, reference H066
District of West Lindsey	Removal of approximately 52.33m of hedgerow within the area identified by a green line on sheet 5 of the hedgerows plan, reference H078
District of West Lindsey	Removal of approximately 52.89m of hedgerow within the area identified by a green line on sheet 5 of the hedgerows plan, reference H079
District of West Lindsey	Removal of approximately 311.93m of hedgerow within the area identified by a green line on sheet 5 of the hedgerows plan, reference H080
District of West Lindsey	Removal of approximately 343.62m of hedgerow within the area identified by a green line on sheet 5 of the hedgerows plan, reference H095
District of West Lindsey	Removal of approximately 207.9m of hedgerow within the area identified by a green line on sheet 5 of the hedgerows plan, reference H096
District of West Lindsey	Removal of approximately 732.03m of hedgerow within the area identified by a green line on sheet 5 of the hedgerows plan, reference H098
District of West Lindsey	Removal of approximately 217.72m of hedgerow within the area identified by a green line on sheet 5 of the hedgerows plan, reference H099
District of West Lindsey	Removal of approximately 200.46m of hedgerow within the area identified by a green line on sheet 5 of the hedgerows plan, reference H101
District of West Lindsey	Removal of approximately 154.03m of hedgerow within the area identified by a green line on sheet 5 of the hedgerows plan, reference H102

District of West Lindsey	Removal of approximately 353.51m of hedgerow within the area identified by a green line on sheet 5 of the hedgerows plan, reference H105
District of West Lindsey	Removal of approximately 686.6m of hedgerow within the area identified by a green line on sheet 6 of the hedgerows plan, reference H082
District of West Lindsey	Removal of approximately 189.01m of hedgerow within the area identified by a green line on sheet 6 of the hedgerows plan, reference H083
District of West Lindsey	Removal of approximately 310.69m of hedgerow within the area identified by a green line on sheet 6 of the hedgerows plan, reference H084
District of West Lindsey	Removal of approximately 226.12m of hedgerow within the area identified by a green line on sheet 6 of the hedgerows plan, reference H085
District of West Lindsey	Removal of approximately 389.15m of hedgerow within the area identified by a green line on sheet 6 of the hedgerows plan, reference H086
District of West Lindsey	Removal of approximately 428.1m of hedgerow within the area identified by a green line on sheet 6 of the hedgerows plan, reference H122
District of West Lindsey	Removal of approximately 364.2m of hedgerow within the area identified by a green line on sheet 6 of the hedgerows plan, reference H123
District of West Lindsey	Removal of approximately 281m of hedgerow within the area identified by a green line on sheet 6 of the hedgerows plan, reference H124
District of West Lindsey	Removal of approximately 588.06m of hedgerow within the area identified by a green line on sheet 6 of the hedgerows plan, reference H125
District of West Lindsey	Removal of approximately 363.57m of hedgerow within the area identified by a green line on sheet 6 of the hedgerows plan, reference H126
District of West Lindsey	Removal of approximately 301.52m of hedgerow within the area identified by a green line on sheet 6 of the hedgerows plan, reference H127
District of West Lindsey	Removal of approximately 416.17m of hedgerow within the area identified by a green line on sheet 7 of the hedgerows plan, reference H116
District of West Lindsey	Removal of approximately 136.26m of hedgerow within the area identified by a green line on sheet 7 of the hedgerows plan, reference H132

District of West Lindsey	Removal of approximately 242.74m of hedgerow within the area identified by a green line on sheet 7 of the hedgerows plan, reference H138
District of West Lindsey	Removal of approximately 144.1m of hedgerow within the area identified by a green line on sheet 7 of the hedgerows plan, reference H140
District of West Lindsey	Removal of approximately 16.12m of hedgerow within the area identified by a green line on sheet 7 of the hedgerows plan, reference H141
District of West Lindsey	Removal of approximately 376.64m of hedgerow within the area identified by a green line on sheet 7 of the hedgerows plan, reference H142
District of West Lindsey	Removal of approximately 308.38m of hedgerow within the area identified by a green line on sheet 7 of the hedgerows plan, reference H143
District of West Lindsey	Removal of approximately 154.6m of hedgerow within the area identified by a green line on sheet 7 of the hedgerows plan, reference H145
District of Bassetlaw	Removal of approximately 15.94m of hedgerow within the area identified by a green line on sheet 7 of the hedgerows plan, reference H147
District of Bassetlaw	Removal of approximately 122.49m of hedgerow within the area identified by a green line on sheet 7 of the hedgerows plan, reference H148
District of Bassetlaw	Removal of approximately 48.5m of hedgerow within the area identified by a green line on sheet 7 of the hedgerows plan, reference H149
District of Bassetlaw	Removal of approximately 51.69m of hedgerow within the area identified by a green line on sheet 8 of the hedgerows plan, reference H151
District of Bassetlaw	Removal of approximately 55.98m of hedgerow within the area identified by a green line on sheet 8 of the hedgerows plan, reference H155
District of Bassetlaw	Removal of approximately 45.02m of hedgerow within the area identified by a green line on sheet 8 of the hedgerows plan, reference H156
District of Bassetlaw	Removal of approximately 166.24m of hedgerow within the area identified by a green line on sheet 8 of the hedgerows plan, reference H158
District of Bassetlaw	Removal of approximately 360.68m of hedgerow within the area identified by a green line on sheet 8 of the hedgerows plan, reference H159
District of Bassetlaw	Removal of approximately 203.58m of hedgerow within the area identified by a green line on sheet 8 of the hedgerows plan, reference H161

District of Bassetlaw	Removal of approximately 330.45m of hedgerow within the area identified by a green line on sheet 8 of the hedgerows plan, reference H162
District of Bassetlaw	Removal of approximately 153m of hedgerow within the area identified by a green line on sheet 8 of the hedgerows plan, reference H163
District of Bassetlaw	Removal of approximately 51.54m of hedgerow within the area identified by a green line on sheet 8 of the hedgerows plan, reference H164
District of Bassetlaw	Removal of approximately 7.08m of hedgerow within the area identified by a green line on sheet 8 of the hedgerows plan, reference H166
District of Bassetlaw	Removal of approximately 7.71m of hedgerow within the area identified by a green line on sheet 8 of the hedgerows plan, reference H167
District of Bassetlaw	Removal of approximately 52.87m of hedgerow within the area identified by a green line on sheet 8 of the hedgerows plan, reference H153
District of Bassetlaw	Removal of approximately 269.75m of hedgerow within the area identified by a green line on sheet 9 of the hedgerows plan, reference H168
District of Bassetlaw	Removal of approximately 410.4m of hedgerow within the area identified by a green line on sheet 9 of the hedgerows plan, reference H170
District of Bassetlaw	Removal of approximately 217.54m of hedgerow within the area identified by a green line on sheet 10 of the hedgerows plan, reference H184
District of Bassetlaw	Removal of approximately 51.86m of hedgerow within the area identified by a green line on sheet 10 of the hedgerows plan, reference H187

## PART 2

### REMOVAL OF POTENTIALLY IMPORTANT HEDGEROWS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of hedgerow and extent of removal</i>
District of West Lindsey	Removal of approximately 278.72m of hedgerow within the area identified by a yellow line on sheet 3 of the hedgerows plan, reference H048
District of West Lindsey	Removal of approximately 473.68m of hedgerow within the area identified by a yellow line on sheet 3 of the hedgerows plan, reference H051
District of West Lindsey	Removal of approximately 443.18m of hedgerow within the area identified by a yellow line on sheet 3 of the hedgerows plan, reference H053

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District of West Lindsey	Removal of approximately 241.96m of hedgerow within the area identified by a yellow line on sheet 4 of the hedgerows plan, reference H061
District of West Lindsey	Removal of approximately 259.6m of hedgerow within the area identified by a yellow line on sheet 4 of the hedgerows plan, reference H067
District of West Lindsey	Removal of approximately 82.78m of hedgerow within the area identified by a yellow line on sheet 4 of the hedgerows plan, reference H076
District of West Lindsey	Removal of approximately 120.2m of hedgerow within the area identified by a yellow line on sheet 5 of the hedgerows plan, reference H097
District of West Lindsey	Removal of approximately 856.54m of hedgerow within the area identified by a yellow line on sheet 5 of the hedgerows plan, reference H104
District of Bassetlaw	Removal of approximately 205.93m of hedgerow within the area identified by a yellow line on sheet 7 of the hedgerows plan, reference H117

### PART 3

#### REMOVAL OF IMPORTANT HEDGEROWS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of hedgerow and extent of removal</i>
District of West Lindsey	Removal of approximately 216.03m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H002
District of West Lindsey	Removal of approximately 775.33m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H004
District of West Lindsey	Removal of approximately 523.89m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H011
District of West Lindsey	Removal of approximately 207.7m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H005
District of West Lindsey	Removal of approximately 177.17m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H006
District of West Lindsey	Removal of approximately 172.6m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H007
District of West Lindsey	Removal of approximately 209.13m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H008

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District of West Lindsey	Removal of approximately 374.47m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H009
District of West Lindsey	Removal of approximately 150.52m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H010
District of West Lindsey	Removal of approximately 606.55m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H025
District of West Lindsey	Removal of approximately 318.77m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H028
District of West Lindsey	Removal of approximately 194.43m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H026
District of West Lindsey	Removal of approximately 239.34m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H027
District of West Lindsey	Removal of approximately 363.72m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H029
District of West Lindsey	Removal of approximately 349.03m of hedgerow within the area identified by a orange line on sheet 1 of the hedgerows plan, reference H031
District of West Lindsey	Removal of approximately 437.28m of hedgerow within the area identified by a orange line on sheet 2 of the hedgerows plan, reference H035
District of West Lindsey	Removal of approximately 573.09m of hedgerow within the area identified by a orange line on sheet 2 of the hedgerows plan, reference H037
District of West Lindsey	Removal of approximately 390.64m of hedgerow within the area identified by a orange line on sheet 2 of the hedgerows plan, reference H038
District of West Lindsey	Removal of approximately 139.51m of hedgerow within the area identified by a orange line on sheet 2 of the hedgerows plan, reference H039
District of West Lindsey	Removal of approximately 277.86m of hedgerow within the area identified by a orange line on sheet 2 of the hedgerows plan, reference H040
District of West Lindsey	Removal of approximately 493.09m of hedgerow within the area identified by a orange line on sheet 2 of the hedgerows plan, reference H042

District of West Lindsey	Removal of approximately 470.92m of hedgerow within the area identified by a orange line on sheet 2 of the hedgerows plan, reference H046
District of West Lindsey	Removal of approximately 769.5m of hedgerow within the area identified by a orange line on sheet 2 of the hedgerows plan, reference H047
District of West Lindsey	Removal of approximately 682.54m of hedgerow within the area identified by a orange line on sheet 2 of the hedgerows plan, reference H050
District of West Lindsey	Removal of approximately 966.17m of hedgerow within the area identified by a orange line on sheet 3 of the hedgerows plan, reference H049
District of West Lindsey	Removal of approximately 217.88m of hedgerow within the area identified by a orange line on sheet 3 of the hedgerows plan, reference H052
District of West Lindsey	Removal of approximately 246.6m of hedgerow within the area identified by a orange line on sheet 3 of the hedgerows plan, reference H054
District of West Lindsey	Removal of approximately 485.54m of hedgerow within the area identified by a orange line on sheet 3 of the hedgerows plan, reference H055
District of West Lindsey	Removal of approximately 421.62m of hedgerow within the area identified by a orange line on sheet 3 of the hedgerows plan, reference H056
District of West Lindsey	Removal of approximately 605.76m of hedgerow within the area identified by a orange line on sheet 3 of the hedgerows plan, reference H057
District of West Lindsey	Removal of approximately 595.84m of hedgerow within the area identified by a orange line on sheet 3 of the hedgerows plan, reference H058
District of West Lindsey	Removal of approximately 441.77m of hedgerow within the area identified by a orange line on sheet 3 of the hedgerows plan, reference H059
District of West Lindsey	Removal of approximately 699.23m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H059
District of West Lindsey	Removal of approximately 540.25m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H060
District of West Lindsey	Removal of approximately 501.6m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H062

District of West Lindsey	Removal of approximately 244.21m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H064
District of West Lindsey	Removal of approximately 249.47m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H065
District of West Lindsey	Removal of approximately 50.4m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H068
District of West Lindsey	Removal of approximately 50.65m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H069
District of West Lindsey	Removal of approximately 219.83m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H071
District of West Lindsey	Removal of approximately 69.43m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H072
District of West Lindsey	Removal of approximately 29.52m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H073
District of West Lindsey	Removal of approximately 27.38m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H074a
District of West Lindsey	Removal of approximately 117.5m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H189
District of West Lindsey	Removal of approximately 127.57m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H077
District of West Lindsey	Removal of approximately 497.88m of hedgerow within the area identified by a orange line on sheet 4 of the hedgerows plan, reference H060
District of West Lindsey	Removal of approximately 784.65m of hedgerow within the area identified by a orange line on sheet 5 of the hedgerows plan, reference H090
District of West Lindsey	Removal of approximately 474.93m of hedgerow within the area identified by a orange line on sheet 5 of the hedgerows plan, reference H091
District of West Lindsey	Removal of approximately 178.7m of hedgerow within the area identified by a orange line on sheet 5 of the hedgerows plan, reference H092
District of West Lindsey	Removal of approximately 392.68m of hedgerow within the area identified by a orange line on sheet 5 of the hedgerows plan, reference H093

District of West Lindsey	Removal of approximately 350.64m of hedgerow within the area identified by a orange line on sheet 5 of the hedgerows plan, reference H094
District of West Lindsey	Removal of approximately 615.76m of hedgerow within the area identified by a orange line on sheet 5 of the hedgerows plan, reference H100
District of West Lindsey	Removal of approximately 789.77m of hedgerow within the area identified by a orange line on sheet 5 of the hedgerows plan, reference H103
District of West Lindsey	Removal of approximately 466.12m of hedgerow within the area identified by a orange line on sheet 5 of the hedgerows plan, reference H106
District of West Lindsey	Removal of approximately 281.19m of hedgerow within the area identified by a orange line on sheet 5 of the hedgerows plan, reference H107
District of West Lindsey	Removal of approximately 372.83m of hedgerow within the area identified by a orange line on sheet 5 of the hedgerows plan, reference H108
District of West Lindsey	Removal of approximately 452.95m of hedgerow within the area identified by a orange line on sheet 5 of the hedgerows plan, reference H109
District of West Lindsey	Removal of approximately 306.42m of hedgerow within the area identified by a orange line on sheet 5 of the hedgerows plan, reference H110
District of West Lindsey	Removal of approximately 408.17m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H081
District of West Lindsey	Removal of approximately 506.92m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H087
District of West Lindsey	Removal of approximately 420.97m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H088
District of West Lindsey	Removal of approximately 729.88m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H089
District of West Lindsey	Removal of approximately 450.56m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H111
District of West Lindsey	Removal of approximately 379.15m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H112

District of West Lindsey	Removal of approximately 192.79m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H113a
District of West Lindsey	Removal of approximately 583.78m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H114
District of West Lindsey	Removal of approximately 794.9m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H115
District of West Lindsey	Removal of approximately 518.64m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H118
District of West Lindsey	Removal of approximately 282.82m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H120
District of West Lindsey	Removal of approximately 1109.22m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H128
District of West Lindsey	Removal of approximately 133.57m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H113b
District of West Lindsey	Removal of approximately 248.89m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H121
District of West Lindsey	Removal of approximately 114.62m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H119
District of West Lindsey	Removal of approximately 29.85m of hedgerow within the area identified by a orange line on sheet 6 of the hedgerows plan, reference H119
District of West Lindsey	Removal of approximately 408.24m of hedgerow within the area identified by a orange line on sheet 7 of the hedgerows plan, reference H129
District of West Lindsey	Removal of approximately 523.74m of hedgerow within the area identified by a orange line on sheet 7 of the hedgerows plan, reference H130
District of West Lindsey	Removal of approximately 490.53m of hedgerow within the area identified by a orange line on sheet 7 of the hedgerows plan, reference H131
District of West Lindsey	Removal of approximately 148.65m of hedgerow within the area identified by a orange line on sheet 7 of the hedgerows plan, reference H133

District of West Lindsey	Removal of approximately 171.25m of hedgerow within the area identified by a orange line on sheet 7 of the hedgerows plan, reference H134
District of West Lindsey	Removal of approximately 374.71m of hedgerow within the area identified by a orange line on sheet 7 of the hedgerows plan, reference H135
District of West Lindsey	Removal of approximately 71.35m of hedgerow within the area identified by a orange line on sheet 7 of the hedgerows plan, reference H136
District of West Lindsey	Removal of approximately 50.74m of hedgerow within the area identified by a orange line on sheet 7 of the hedgerows plan, reference H137
District of West Lindsey	Removal of approximately 168.02m of hedgerow within the area identified by a orange line on sheet 7 of the hedgerows plan, reference H139
District of West Lindsey	Removal of approximately 356.56m of hedgerow within the area identified by a orange line on sheet 7 of the hedgerows plan, reference H144
District of Bassetlaw	Removal of approximately 117.22m of hedgerow within the area identified by a orange line on sheet 7 of the hedgerows plan, reference H146
District of Bassetlaw	Removal of approximately 204.54m of hedgerow within the area identified by a orange line on sheet 7 of the hedgerows plan, reference H150
District of Bassetlaw	Removal of approximately 113.72m of hedgerow within the area identified by a orange line on sheet 8 of the hedgerows plan, reference H152
District of Bassetlaw	Removal of approximately 321.13m of hedgerow within the area identified by a orange line on sheet 8 of the hedgerows plan, reference H154
District of Bassetlaw	Removal of approximately 273.73m of hedgerow within the area identified by a orange line on sheet 8 of the hedgerows plan, reference H157
District of Bassetlaw	Removal of approximately 29.73m of hedgerow within the area identified by a orange line on sheet 8 of the hedgerows plan, reference H160
District of Bassetlaw	Removal of approximately 288.41m of hedgerow within the area identified by a orange line on sheet 8 of the hedgerows plan, reference H165
District of Bassetlaw	Removal of approximately 50.67m of hedgerow within the area identified by a orange line on sheet 9 of the hedgerows plan, reference H169
District of Bassetlaw	Removal of approximately 54.62m of hedgerow within the area identified by a orange line on sheet 9 of the hedgerows plan, reference H171

District of Bassetlaw	Removal of approximately 79.43m of hedgerow within the area identified by a orange line on sheet 9 of the hedgerows plan, reference H172
District of Bassetlaw	Removal of approximately 486.9m of hedgerow within the area identified by a orange line on sheet 9 of the hedgerows plan, reference H173
District of Bassetlaw	Removal of approximately 99.29m of hedgerow within the area identified by a orange line on sheet 9 of the hedgerows plan, reference H174
District of Bassetlaw	Removal of approximately 61.85m of hedgerow within the area identified by a orange line on sheet 9 of the hedgerows plan, reference H175
District of Bassetlaw	Removal of approximately 129.68m of hedgerow within the area identified by a orange line on sheet 9 of the hedgerows plan, reference H176
District of Bassetlaw	Removal of approximately 50.82m of hedgerow within the area identified by a orange line on sheet 10 of the hedgerows plan, reference H177
District of Bassetlaw	Removal of approximately 68.89m of hedgerow within the area identified by a orange line on sheet 10 of the hedgerows plan, reference H178
District of Bassetlaw	Removal of approximately 67.07m of hedgerow within the area identified by a orange line on sheet 10 of the hedgerows plan, reference H179
District of Bassetlaw	Removal of approximately 56.23m of hedgerow within the area identified by a orange line on sheet 10 of the hedgerows plan, reference H180
District of Bassetlaw	Removal of approximately 79.38m of hedgerow within the area identified by a orange line on sheet 10 of the hedgerows plan, reference H181
District of Bassetlaw	Removal of approximately 93.44m of hedgerow within the area identified by a orange line on sheet 10 of the hedgerows plan, reference H182
District of Bassetlaw	Removal of approximately 50.63m of hedgerow within the area identified by a orange line on sheet 10 of the hedgerows plan, reference H183
District of Bassetlaw	Removal of approximately 351.68m of hedgerow within the area identified by a orange line on sheet 10 of the hedgerows plan, reference H186
District of Bassetlaw	Removal of approximately 50.05m of hedgerow within the area identified by a orange line on sheet 10 of the hedgerows plan, reference H188
District of Bassetlaw	Removal of approximately 191.74m of hedgerow within the area identified by a orange line on sheet 10 of the hedgerows plan, reference H185

SCHEDULE 14

Article 40

DOCUMENTS AND PLANS TO BE CERTIFIED

(1) <i>Document name</i>	(2) <i>Document reference</i>	(3) <i>Revision number</i>	(4) <i>Date</i>
Access plan	EN010132/APP/WB2.5	1	March 2023
Book of reference	EN010132/APP/WB4.3	1	March 2023
Concept design parameters and principles	EN010132/APP/WB7.13	1	March 2023
Crown land plan	EN010132/APP/WB2.10	1	March 2023
Environmental statement	EN010132/APP/WB6.1	1	March 2023
Hedgerows plan	EN010132/APP/WB2.9	1	March 2023
Land plan	EN010132/APP/WB2.2	1	March 2023
Outline battery storage safety management plan	EN010132/APP/WB7.9	1	March 2023
Outline construction environmental management plan	EN010132/APP/WB7.1	1	March 2023
Outline construction traffic management plan	EN010132/APP/WB6.14.2	1	March 2023
Outline decommissioning statement	EN010132/APP/WB7.2	1	March 2023
Outline drainage strategy	EN010132/APP/WB6.3.10.1	1	March 2023
Outline ecological protection and mitigation strategy	EN010132/APP/WB7.17	1	March 2023
Outline landscape and ecological management plan	EN010132/APP/WB7.3	1	March 2023
Outline operational environmental management plan	EN010132/APP/WB7.14	1	March 2023
Outline public rights of way management plan	EN010132/APP/WB6.3.14.3	1	March 2023
Outline skills, supply chain and employment plan	EN010132/APP/WB7.10	1	March 2023
Outline soils management plan	EN010132/APP/WB7.16	1	March 2023

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Public rights of way plan	EN010132/APP/WB2.4	1	March 2023
Streets plan	EN010132/APP/WB2.11	1	March 2023
Works plan	EN010132/APP/WB2.3	1	March 2023

## SCHEDULE 15

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.** 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;

“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 NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

#### Application

**18.** 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

**19.** 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;

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(a) 1989 c. 29.

“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 24 or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 24 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.”

20. Except for paragraphs 21 (apparatus of National Grid in streets subject to temporary stopping up), 26 (retained apparatus: protection of National Grid as electricity undertaker), 27 (expenses) and 28 (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 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**

21.—(1) Where any street or public right of way is stopped up under article 11 (temporary stopping up of streets and 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 24 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 26.

(2) Notwithstanding the temporary stopping up under the powers of article 11 (Temporary stopping up of streets and public rights of way), 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**

22. 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**

**23.**—(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 26 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**24.**—(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 25(1) below) the necessary facilities and rights—

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

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

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

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph

(2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

**25.**—(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 32 (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**

**26.**—(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—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues; and
- (h) 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 24(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

27.—(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 24(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 (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**

**28.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by 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 34 (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 28 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**

29. 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**

30.—(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 24(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 26, 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 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**

31. If in consequence of the agreement reached in accordance with paragraph 23 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**

32. Save for differences or disputes arising under paragraphs 24(2), 24(4), 25(1) and 26 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**

33. The plans submitted to National Grid by the undertaker pursuant to paragraph 26(1) 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.

## PART 4

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

#### Application

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

**35.** 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 6 metres of any apparatus;

“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

**36.** 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

**37.** 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.

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(a) 1989 c. 29. The definition of “electricity plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).

## **Removal of apparatus**

**38.**—(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 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 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 paragraph 10.

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to article 42, 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; 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 600 millimetres of the point of connection or disconnection.

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

**39.**—(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.

(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**

**40.**—(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 38 (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) below.

(2) Subject to sub-paragraph (3) below 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) 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 38(3) (removal of apparatus).

(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 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.

(7) 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 (5).

### **Expenses and costs**

**41.**—(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 38(2) (removal of apparatus); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to 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.

**42.**—(1) Subject to sub-paragraphs (2) to (4), if by reason or in consequence of the construction of any works as are referred to in paragraph 38(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;
- (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.

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

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

(4) 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 5

### FOR THE PROTECTION OF NORTHERN POWERGRID

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

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

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

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

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(b)), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised works” means so much of the works authorised by this Order which affect existing Northern Powergrid’s apparatus within the Order limits;

“functions” includes powers and duties;

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

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid’s undertaking; and

“Northern Powergrid” means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne NE1 6AF.

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

**46.** Regardless of any provision in this Order or anything shown on the land plans, or contained in the book of reference, the undertaker shall not acquire any apparatus, or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

**47.**—(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 Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid 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 pursuant to a completed easement for a tenure no less than exists to the apparatus being relocated or diverted, all to the reasonable satisfaction of Northern Powergrid in accordance with subparagraphs (2) to (5).

(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

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(a) 1991 c. 22.  
(b) 1989 c. 29.

in that land, the undertaker must give to Northern Powergrid 42 days' advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(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, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end unless:

- (a) the undertaker has first used reasonable endeavours to acquire the relevant land, rights and/or interests and provided reasonable evidence of the same to Northern Powergrid in accordance with the measures set out in the plan (in default of agreement, the reasonableness of any such measures to be determined through arbitration under article 42 (arbitration)); and
- (b) the undertaker and Northern Powergrid agree (or in default of agreement, it is determined through arbitration under article 42 (arbitration)) that the promotion of compulsory purchase powers by the undertaker would be significantly more onerous than the exercise of Northern Powergrid's own compulsory powers.

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

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to Northern Powergrid 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.

**48.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 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 Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**49.—**(1) Not less than 48 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 (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment) or will or may affect, any apparatus the removal of which has not been required by the

undertaker under paragraph 47(5), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

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

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 43 to 48 apply as if the removal of the apparatus had been required by the undertaker under paragraph (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 35 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid 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.

**50.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

- (a) 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 47(2) including without limitation:
  - (i) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that it is agreed Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 47(3) all costs reasonably incurred as a result of such action;
  - (ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
  - (iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
  - (iv) the approval of plans;
  - (v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
  - (vi) 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); and
- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 47(1) having first decommissioned such apparatus.

(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 and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) 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 Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(3) For the purposes of sub-paragraph (2)—

- (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 47(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.

**51.—**(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 47(2), or in consequence of the, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works 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 Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and
- (b) indemnify Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid,

by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

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

(3) Northern Powergrid 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.

(4) Northern Powergrid 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 9 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 9 for claims reasonably incurred by Northern Powergrid.

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

**53.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 5 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 49, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

**54.** If in consequence of an agreement reached in accordance with paragraph 46 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

**55.** The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of the Schedule must be sent to Northern Powergrid at [property@northernpowergrid.com](mailto:property@northernpowergrid.com) or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PART 6

### FOR THE PROTECTION OF CADENT GAS LIMITED

#### **Application**

**56.** The following provisions will have effect for the protection of Cadent unless otherwise agreed in writing between the undertaker and Cadent.

#### **Interpretation**

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

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent's undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995(b));

“commence” and “commencement” has the same meaning as given in article 2(1) and for the purpose of this Part of this Schedule only includes any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

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

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (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, requires the undertaker to submit for Cadent’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” have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use;

“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;

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any part of the authorised development or activities (including maintenance) 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 sub-paragraph 23(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 23(2) or otherwise.

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(a) 1989 c. 29.  
(b) 1995 c. 45.

### **On street apparatus**

**58.**—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

- (a) paragraphs 59, 64, 65, 66, and 67; and
- (b) where sub-paragraphs (2) applies, paragraphs 62 and 63.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) The protective provisions in this Part of this Schedule apply and take precedence over article 32 (apparatus and rights of statutory undertakers in stopped up streets) of the Order which does not apply to Cadent.

### **Apparatus of Cadent in stopped up streets**

**59.**—(1) Where any street or public right of way is stopped up under article 11 (temporary stopping up of streets and public rights of way), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent 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 of Cadent to require the removal of that apparatus under paragraph 62.

(2) Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 11 (temporary stopping up of streets and public rights of way), Cadent will be 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 it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

### **Protective works to buildings**

**60.** The undertaker must exercise the powers conferred by article 18 (protective works to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed).

### **Acquisition of land**

**61.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the construction or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent.

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

(4) Any agreement or consent granted by Cadent under paragraph 64 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**62.**—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 61, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works 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 Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 63(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If 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, Cadent 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 assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

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

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) 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 Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 70 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of Cadent**

**64.**—(1) Not less than 56 days (or such time period as may be agreed in writing between Cadent and the undertaker) before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement which describes—

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

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent given under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
- (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) In relation to any specified works to which sub-paragraph (1) applies, Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and

(b) all conditions imposed under sub-paragraph (4)(a), and Cadent is entitled to watch and inspect the execution of those works.

(7) Where Cadent 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 Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 62(2) provided that such written notice must be given by Cadent to the undertaker within 28 days of submission of a plan pursuant to sub-paragraph (1).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days (unless otherwise agreed in writing by Cadent and the undertaker) before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—

(a) the undertaker must implement an appropriate ground mitigation scheme; and

(b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 65.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(12) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

## **Expenses**

**65.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 62(3) if it elects to do so; or

(ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

- (e) the carrying out of protective works (including any protective works pursuant to article 18 (protective works to buildings), plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works if required;
  - (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; and
  - (g) any watching brief pursuant to sub-paragraph 64(6).
- (2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.
- (3) If in accordance with the provisions of this Part of this Schedule—
- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,
- and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 70 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 Cadent 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; 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 Cadent 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 Cadent 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**

**66.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 18 (protective works to buildings)) 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 the undertaker) 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 Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent 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 Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
  - (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, or costs properly incurred by, or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any negligence, omission or default of Cadent.
- (2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent 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 Cadent.
- (3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—
- (a) any damage or interruption to the extent that it is attributable to the neglect, omission or default of Cadent, its officers, servants, contractors or agents; and
  - (b) any part of the authorised development or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the 2008 Act or article 35 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus, any specified works yet to be executed and not falling within this paragraph (b) are subject to the full terms of this Part of this Schedule including this paragraph in respect of such new apparatus.
- (4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.
- (5) Cadent 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 applies. If requested to do so by the undertaker, Cadent must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph for claims reasonably incurred by Cadent.

### **Enactments and agreements**

**67.** Except where this Part of this Schedule provides otherwise, or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent 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**

**68.—**(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 62(2)) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 64, the undertaker must 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 Cadent’s undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

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

## Access

69. If in consequence of any agreement reached in accordance with paragraph 61(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

## Arbitration

70. Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 42 (arbitration).

## Notices

71. Notwithstanding article 45 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 64(1) must be sent via email to Cadent Gas Limited Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) copied by e-mail to [vicky.cashman@cadentgas.com](mailto:vicky.cashman@cadentgas.com) and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

# PART 7

## FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

## Application

72. The following provisions have effect for the protection of Anglian Water unless otherwise agreed in writing between the undertaker and Anglian Water.

## Interpretation

73. In this Part of this Schedule—

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

“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(b);
- (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

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(a) 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).

(b) 1991 c. 57.

includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

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

“functions” includes powers and duties;

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

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

### **On street apparatus**

74. 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**

75.—(1) Where any streets or public right of way is stopped up under article 11 (temporary stopping up of streets and public rights of way), where Anglian Water has apparatus in the street or accessed by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Anglian Water legal easements reasonably satisfactory to Anglian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 78 or the power of the undertaker to carry out works under paragraph 80.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 11 (temporary stopping up of streets and 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**

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

### **Acquisition of land**

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 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 79.

(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, and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

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

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best 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**

**79.**—(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 (England and Wales) Regulations 2010<sup>(a)</sup> or other legislation.

### **Retained apparatus**

**80.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 78(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

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

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

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 72 to 74 and 77 to 79 apply as if the removal of the apparatus had been required by the undertaker under paragraph 78(2).

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

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

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

- (a) 4 metres where the diameter of the pipe is less than 250 millimetres;
- (b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and

(8) a distance to be agreed on a case by case basis and before the submission of the Plan under sub-paragraph (1) is submitted where the diameter of the pipe exceeds 400 millimetres.

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<sup>(a)</sup> S.I. 2010/675.

## Expenses and costs

**81.**—(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 sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 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 sub-paragraph (1) must be reduced by the amount of that excess.

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

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

**82.**—(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 78(2) or 80, or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

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

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

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

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

(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) To the extent (but not greater) that Anglian Water has not used its reasonable endeavours to mitigate and minimise in whole or in part any costs, expenses, loss, demands, and penalties to which the provisions of this Part apply, that amount of such costs, expenses, loss, demands and penalties shall not be recoverable from the undertaker. If requested to do so by the undertaker, Anglian Water shall provide an explanation of how any claim has been minimised. The undertaker shall only be liable under paragraph 82 for claims reasonably incurred by Anglian Water.

### **Cooperation**

**83.** 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 78(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 80, 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.

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

**85.** 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.

**86.** 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 8**

### **FOR THE PROTECTION OF INTERNAL DRAINAGE BOARDS**

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

**88.** In this Part—

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

“the Board” means Upper Witham Internal Drainage Board or Trent Valley Internal Drainage Board (as applicable);

“drainage work” means any ordinary watercourse and includes any land that provides or is expected to provide flood storage capacity for any ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

“Internal Drainage District” has the meaning given in the Land Drainage Act 1991(a);

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(a) 1991 c. 59.

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

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

“evidence” includes hydraulic modelling, infiltration test results and geotechnical evaluations;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 9 metres of a drainage work within the Board’s Internal Drainage District or is otherwise likely to—

- (a) affect any drainage work within the Board’s Internal Drainage District
- (b) affect the total volume or volumetric rate of flow of water in or flowing to or from any drainage work within the Board’s Internal Drainage District;
- (c) affect the flow of water in any drainage work within the Board’s Internal Drainage District; or
- (d) affect the conservation, distribution or use of water resources.

**89.**—(1) Before beginning to construct any specified work, the undertaker must submit to the Board plans of the specified work, evidence to support said plans and any such further particulars available to it as the Board may within 28 days of the submission of the plans reasonably require (or submission of further particulars if required by the Board).

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Board or determined under paragraph 96.

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

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or the submission of further particulars if applicable) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements and conditions as the Board may consider appropriate,

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

**90.** Without limiting paragraph 89, the requirements which the Board 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—

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

**91.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Board under paragraph 89, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the Board, and an officer of the Board is entitled to give such notice as may be reasonably required in the circumstances to watch and inspect the construction of such works.

(2) The undertaker must give to the Board—

- (a) not less than 14 days’ notice in writing of its intention to commence construction of any specified work; and

- (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.
- (3) If the Board reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.
- (4) If any part of a specified work or any protective work required by the Board is constructed otherwise than in accordance with the requirements of this Part, the Board may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the Board 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 Board reasonably requires.
- (5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Board may execute the works specified in the notice, and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.
- (6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Board must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally resolved by agreement or determined under paragraph 96.

**92.** 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 the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Board and, if the undertaker fails to do so, the Board may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

**93.** The undertaker must compensate the Board in respect of all costs, charges and expenses that the Board may reasonably incur, have to pay or may sustain—

- (a) in the examination or approval of plans and evidence under this Part;
- (b) in inspecting the proposed site for and construction of any specified work or any protective works required by the Board under this Part; and
- (c) in carrying out of any surveys or tests by the Board that are reasonably required in connection with the construction of the specified work.

**94.—(1)** Without limiting the other provisions of this Part, the undertaker must compensate the Board in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, reasonably recovered from or incurred by the Board by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any flooding or increased flooding of any such land which is caused by, or results from, the construction of the specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) The Board must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

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

**95.** 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 Board, 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.

**96.** Any dispute between the undertaker and the Board under this Part, unless otherwise agreed, must be determined by arbitration under article 42 (arbitration), but must be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Business, Energy and Industrial Strategy acting jointly on a reference to them by the undertaker or the Board, after notice in writing by one to the other.

## PART 9

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

**97.—(1)** The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) 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.

**98.** 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.

**99.—(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 108.

(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).

**100.** The requirements which the Agency may have under paragraph 99(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.

**101.** Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 100, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) 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 106, 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).

**102.**—(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 106, 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 108.

(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.

**103.** Subject to paragraph 106, 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.

**104.** 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.

**105.**—(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 106, 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 106, 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.

**106.** 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.

**107.**—(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—

- (c) contractual liabilities;
- (d) tortious liabilities (including liabilities for negligence or nuisance);
- (e) liabilities to pay statutory compensation or for breach of statutory duty; and
- (f) 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.

**108.** 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 10

### FOR THE PROTECTION OF RAILWAY INTERESTS

**109.** The provisions of this Part of this Schedule have effect, unless agreed in writing between the undertaker and Network Rail and, in the case of paragraph 123 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

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

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, 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 railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

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(a) 1993 c. 43.  
(b) 2006 c. 46.

- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under:

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

**111.**—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

#### **112.** Not used

**113.**—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer’s opinion should be carried out before

the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

**114.**—(1) Any specified work and any protective works to be constructed by virtue of paragraph 113(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 113;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**115.** The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

**116.** Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**117.**—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation

of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 113(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 118(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**118.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 113(3) or in constructing any protective works under the provisions of paragraph 113(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**119.**—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 113(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must

continue to consult with Network Rail (both before and after formal submission of plans under paragraph 113(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 113(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 114.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 123(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph 113 applies.

(10) For the purpose of paragraph 118(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 42 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

**120.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**121.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**122.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**123.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 41 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network

Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**124.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 123) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

**125.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**126.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**127.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

**128.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 35 (consent to transfer the benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**129.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 40 (certification of plans and documents, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

**130.** In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 119) the provisions of article 42 (arbitration) shall not

apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator in accordance with the Rules at Schedule 15 (arbitration rules) to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

## [PART 11

### FOR THE PROTECTION OF COTTAM SOLAR PROJECT LIMITED

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

**132.** 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. 6 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 Project Order for the time being;

“Cottam Work No. 6 Area” means the area for Work No. 6 authorised in the Cottam Solar Project 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. 6 Area;

“specified works” means so much of any works of 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. 6 Area;
- (b) in, on, under, over or within 25 metres of the proposed Cottam Work No. 6 Area or any apparatus; or
- (c) may in any way adversely affect any apparatus.

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

**134.** 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.

**135.** 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. 6 Area without the consent of Cottam, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

**136.—(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 any 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. 6 Area or for securing access to such apparatus or the proposed Cottam Work No. 6 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.

**137.**—(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 136 or sub-paragraph (1) in a case of emergency, but in that case it must give Cottam 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 paragraph 136 in so far as is reasonably practicable in the circumstances.

**138.** 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.

**139.**—(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. 6 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.

**140.** 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.

**141.** 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. 6 Area.

**142.** 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. 6 Area request up-to-date written confirmation from Cottam of the location of any apparatus or proposed apparatus.

**143.** 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.

**144.** 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 alteration or protection of any apparatus or the proposed Cottam Work No. 6 Area.

**145.**—(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 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 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.

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

## [PART 12

### FOR THE PROTECTION OF GATE BURTON ENERGY PARK LIMITED

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

**148.** In this Part—

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

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

“Gate Burton” means an undertaker with the benefit of all or part of the Gate Burton Energy Park Order for the time being;

“Gate Burton Work No. [ ] Area” means the area for Work No. [ ] authorised in the Gate Burton Energy Park 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 Gate Burton Work No. [ ] Area;

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

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

**149.** The consent of Gate Burton under this Part is not required where the Gate Burton Energy Park Order has expired without the authorised development having been commenced pursuant to requirement 1 of Schedule 2 to the Gate Burton Energy Park Order.

**150.** Where conditions are included in any consent granted by Gate 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 Gate Burton.

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

**152.—(1)** The undertaker must not under the powers of this Order carry out any specified works without the consent of Gate Burton, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if Gate 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 Gate Burton and must submit any such further particulars available to it that Gate Burton may reasonably require.

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

(4) Any approval of Gate 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 Gate Burton Work No. [ ] Area or for securing access to such apparatus or the proposed Gate Burton Work No. [ ] Area.

(5) Where Gate 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 Gate 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.

**153.—(1)** The undertaker must give to Gate 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 Gate Burton written notice of the completion.

(2) The undertaker is not required to comply with paragraph 152 or sub-paragraph (1) in a case of emergency, but in that case it must give Gate Burton 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 paragraph 152 in so far as is reasonably practicable in the circumstances.

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

**155.—(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 Gate Burton requiring the undertaker to do so, remove the temporary works in, on, under, over or within the Gate Burton Work No. [ ] 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), Gate Burton may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

**156.** 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 Gate Burton to maintain or use the apparatus no less effectively than was possible before the obstruction.

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

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

**159.** The undertaker and Gate 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.

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

**161.**—(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 Gate Burton, or Gate Burton becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Gate Burton in making good such damage or restoring the service or supply; and
- (b) compensate Gate Burton for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Gate Burton, by reason or in consequence of any such damage or interruption or Gate 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 Gate Burton, its officers, servants, contractors or agents.

(3) Gate 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) Gate 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 applies. If requested to do so by the undertaker, Gate Burton shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph for claims reasonably incurred by Gate Burton.

(5) The fact that any work or thing has been executed or done with the consent of Gate Burton and in accordance with any conditions or restrictions prescribed by Gate Burton or in accordance with any plans approved by Gate 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.

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

## 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 West Burton Solar Project 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].