

**202[] No.**

**INFRASTRUCTURE PLANNING**

**The Byers Gill Solar Development Consent Order []**

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

*Coming into force* \*\*\*

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

The application was 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 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The Examining Authority having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the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

The Secretary of State, having considered the representations made and not withdrawn, and the recommendations and report of the single appointed person, and taken into account the environmental information in accordance with regulation 4 of the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

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(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).  
 (b) S.I. 2009/2264, amended by S.I. 2010/602, S.I. 2010/602, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2015/377, S.I. 2017/572; modified by S.I. 2012/1659.  
 (c) S.I. 2010/103, amended by S.I. 2012/635.  
 (d) S.I. 2017/572.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120, 122 and 123 of the 2008 Act, makes the following Order—

## PART 1 PRELIMINARY

### Citation and commencement

1.—(1) This Order may be cited as the Byers Gill Solar Development Consent Order 20[•] and comes into force on [•].

### Interpretation

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

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

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

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

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(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 2004 Act” means the Energy Act 2004(h);

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

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

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

“arboricultural impact assessment” means the document certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

“archaeological management strategy” means the document certified as the archaeological management strategy for the purposes of this Order under article 37 (certification of plans, etc);

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

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

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

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of the Order under article 37 (certification of plans, etc);

“CCTV” means a closed circuit television security system;

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(a) 1961 c.33.

(b) 1965 c.56.

(c) 1980 c.66.

(d) 1981 c.66.

(e) 1989 c.29.

(f) 1990 c.8.

(g) 1991 c.22. Section 48(3A) was inserted by section 124(2) of the Local Transport Act 2008 (c.26). Sections 70(6), 74(7B), 74A(11), and 88(6) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(h) 2004 c.20.

(i) 2008 c.29.

“CEMP” means the construction environmental management plans to be submitted pursuant to requirement 4;

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

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

“CTMP” means the construction traffic management plan to be submitted pursuant to requirement 6;

“design approach document” means the document certified by the Secretary of State as the design approach document for the purposes of this Order under article 37 (certification of plans, etc);

“electronic transmission” means a communication transmitted—

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

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

“Environment Agency” means the Environment Agency and any successor in name or function;

“environmental masterplan” means the documents certified by the Secretary of State as such for the purposes of this Order under article 37 (certification of plans, etc);

“environmental statement” means the document certified by the Secretary of State as the environmental statement for the purposes of this Order under article 37 (certification of plans, etc);

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

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

“land plans” means the plans certified by the Secretary of State as the land plans for the purposes of this Order under article 37 (certification of plans, etc);

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

“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 any derivative of “maintain” must be construed accordingly;

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

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

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

“outline battery fire safety management plan” means the plan certified by the Secretary of State as such for the purposes of this Order under article 37 (certification of plans, etc);

“outline CEMP” means the document certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order in accordance with article 37 (certification of plans, etc);

“outline CTMP” means the document certified by the Secretary of State as the outline construction traffic management plan for the purposes of the Order in accordance with article 37 (certification of plans, etc);

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

“outline DEMP” means the document certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

“outline LEMP” means the document certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order in accordance with article 37 (certification of plans, etc);

“outline materials management plan” means the document certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

“outline pollution and spillage response plan” means the document certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

“outline public rights of way management plan” means the document certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

“outline site waste management plan” means the document certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

“outline soil resource management plan” means the document certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

“relevant highway authority” means the highway authority for the area to which the provision relates;

“relevant planning authority” means the local planning authority for the area to which the provision relates;

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

“site preparation works” means all or any of—

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

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

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

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

“street works, public rights of way and access plan” means the plan certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc)

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

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

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

“trees and hedgerows to be removed plan” means the plan appended to the arboricultural impact assessment setting out the extent of trees and hedgerows to be removed;

“undertaker” means RWE Renewables UK Solar and Storage Limited (company registration number 14539260) whose registered address is Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB;

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

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

“works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order in accordance with article 37 (certification of plans, etc);

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

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

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

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

(6) 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.

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

## PART 2

### PRINCIPAL POWERS

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

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

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this order.

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

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

#### **Operation of generating stations**

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

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

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

(2) Subject to the powers of this Order, the undertaker may with the written consent of the Secretary of State—

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

(3) Where a transfer or grant has been made, references in this Order to the undertaker, except in paragraph (8), are to include references to the transferee or lessee.

(4) 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 supplies etc.) of the 1989 Act;
- (b) the transferee or lessee is a holding company or subsidiary of the undertaker; or
- (c) 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.
- (d) The transfer or grant is made to—
  - (i) Northern Powergrid Holding Company (company registration number 03476201) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF for the purposes of undertaking Work No. 3(b), 4, 5, and 6.

(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 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.

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

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

- (a) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(a); and
- (b) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017(b).

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

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

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(d); or
  - (ii) is a consequence of the construction maintenance or decommissioning of the authorised development and cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) (prior consent for work on construction sites) or of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction maintenance or decommissioning of the authorised development.

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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) 2017 c.20.

(c) 1990 c.43.

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

## PART 3 STREETS

### Street works

**9.**—(1) The undertaker may for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus under the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) repair, replace or otherwise alter the surface or structure of it; 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 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) In this article “apparatus” has the same meaning as Part 3 of the 1991 Act.

(4) 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 until paragraph (1).

### Application of the 1991 Act

**10.**—(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) The carrying out of works under article 9 (street works); and
- (b) The temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under article 13 (temporary stopping up of public rights of way);
- (c) whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act<sup>(a)</sup> are—

- (a) subject to paragraph (3), section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route; and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in sub-paragraphs (a) to (g).

(3) Section 55 of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

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<sup>(a)</sup> Sections 55, 57, 60, 68, and 69 were amended by the Traffic Management Act 2004 (c. 18).

(4) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 56(d) (power to give directions as to timing of street works);
- (b) section 56A(e) (power to give directions as to placing of apparatus);
- (c) section 58(f) (restriction on works following substantial road works);
- (d) section 58A(g) (restriction on works following substantial road works);
- (e) section 61 (protected streets); and
- (f) schedule 3A(h) (restriction on works following substantial street works).

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

**11.**—(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 and maintained by the highway authority) of Schedule 4 (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 4 temporarily in the manner specified in relation to that street in column 3.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating maintaining or decommissioning 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 the carriageway by reducing the width of any kerb, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track, or verge;
- (c) reduce the width of the carriageway;
- (d) make and maintain passing places; and
- (e) alter, remove, replace and relocate any street furniture, including bollards, lighting columns, road signs and chevron signs.

(3) The powers conferred by paragraph (2)—

- (a) are exercisable on the giving of not less than 6 weeks notice to the street authority; and
- (b) are not to be exercised without the consent of the street authority where that authority is a public authority

(4) If a street authority which received an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 6 weeks beginning with the date on which the application was made, it is deemed to have granted consent.

(5) Any application to which this article applies must include a statement that the provisions of paragraph (5) apply to that application.

(6) Paragraphs (3), (4) and (5) 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**

**12.**—(1) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout and maintained by the highway authority) of Schedule 4 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, the alterations including any culverts, bunding or other structures laid under it or supporting it 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) Where a footpath or bridleway is constructed altered or diverted under this Order, the constructed altered or diverted part of that highway must be completed to the reasonable satisfaction of the relevant highway authority and, unless otherwise agreed in writing with the relevant highway authority, that part of the footpath or bridleway including any culverts, bunding or other structures laid under it or supporting it 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;

(3) 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.

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

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

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

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

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

**13.—**(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily stop up, alter or divert any public rights of way and may for any reasonable time, subject to paragraph (2), prevent all persons from passing along the public rights of way.

(2) Without limiting paragraph (1), the undertaker may use any public rights of way temporarily stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(3) Without limiting paragraph (1), the undertaker may temporarily stop up, alter or divert the public rights of way specified in column (2) of Part 1 of Schedule 5 (public rights of way to be stopped up) to the extent specified, by reference to the letters and numbers shown on the streets and access plan, in column (3) of those Schedules.

(4) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site—

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

(5) Any person who suffers loss by the suspension of any 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) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(b) that street authority is deemed to have granted consent.

### **Public rights of way**

**14.—**(1) The public rights of way identified in columns (1) to (3) of Part 2 (public rights of way to be permanently stopped up) of Schedule 5 (public rights of way to be stopped up) and shown on the street works, public rights of way and access plan are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(2) Prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Part 2 of Schedule 5 and shown on the street works, public rights of way and access plan, the undertaker must erect a site notice at each end of the rights of way to be extinguished no less than 28 days prior to the extinguishment of that right of way.

(3) The notice to be erected under paragraph (2) must include—

- (a) details of the public rights of way to be extinguished;
- (b) the date on which the extinguishment will take effect;
- (c) details of any public rights of way being provided in substitution; and
- (d) details of the place where a copy of this Order and the documents listed in Schedule 13 (documents to be certified) may be inspected.

(4) No public rights of way specified in Part 2 of Schedule 5 being a public right of way which is to be permanently extinguished is to be wholly or partly stopped up under this article unless—

- (a) The new public right of way to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule has been completed to the reasonable satisfaction of the local highway authority and is open for use; or
- (b) a temporary alternative route for the passage of such users as could have used the public right of way to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the local highway authority, between the commencement and termination points for the stopping up of the public right of way until the completion and opening of the new public right of way in accordance with sub-paragraph (a).

### **Access to works**

**15.—**(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 6 (access to works);
- (b) form and lay out the temporary means of access in the location specified in Part 2 (temporary means of access to works) of Schedule 6; and
- (c) with the prior approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

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

### **Agreements with street authorities**

**16.—**(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, restriction, alteration or diversion of a street authorised by this Order;
  - (c) the carrying out in the street of any of the works referred to in article 9(1) (street works); 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) Such 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**

**17.**—(1) Subject to the provisions of this article, the undertaker may make temporary provision for the purposes of the construction or decommissioning 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 or made, or having effect as if made, under the 1984 Act.
- (2) 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 Amendments) Regulations 2011<sup>(a)</sup> when in accordance with regulation 3(5) of those regulations.
- (3) 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.
- (4) 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 to do so 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 newspapers circulating in the area in which any road to which the provision relates is situated.
- (5) 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 in paragraph (1) or (2).
- (6) 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;

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<sup>(a)</sup> S.I. 2011/935.

- (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 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004<sup>(a)</sup>.

## PART 4 SUPPLEMENTAL POWERS

### Discharge of water

**18.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain subject to the obtaining of consent and approval respectively pursuant to paragraphs (3) and (4) below.

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

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

(4) The undertaker must not carry out any works to or make any opening into any public sewer or drain pursuant to paragraph (1) except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(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 is prohibited by regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016<sup>(c)</sup>.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

(9) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

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(a) 2004 c.18.

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

(c) S.I. 2016/1154.

### **Protective work to buildings**

19.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building located within the Order limits 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 purposes 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 that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it) within the Order limits.

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works to a building;
- (b) a power under paragraph (3) to enter a building and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power 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 the power and, in a case falling within sub-paragraphs (a) and (c), specify the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c), or (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 of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 41 (arbitration).

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

(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 that the protective works are inadequate to protect the building against damage caused by the construction, operation or maintenance of that part of the authorised development,

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

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act.

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

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

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

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

20.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

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

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

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

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

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

- (a) in land held by or in right of the Crown without the consent of the Crown;
- (b) in land located within the highway boundary without the consent of the highway authority; or
- (c) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

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

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(b) in the case of a highway authority; or
- (b) under paragraph (4)(c) in the case of a street authority,

that authority is deemed to have granted consent.

(7) 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

**Commented [A1]:** Shouldn't the Applicant include an article on Temporary Use of land for constructing the authorised development?

#### Compulsory acquisition of land

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

(2) This article is subject to paragraph (2) of article 23 (compulsory acquisition of rights), article 25 (acquisition of subsoil only) and article 30 (temporary use of land for carrying out the authorised development).

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

**22.—**(1) After the end of the period of 5 years beginning on the day on which the 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;
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act).

(2) The authority conferred by article 30 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

#### Compulsory acquisition of rights

**23.—**(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 21 (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 24 (private rights) and article 32 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (3) 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 10 of Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 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.

## Private rights

24.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 21 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 21—

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

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 23 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

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

whichever is the earliest.

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) 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 32 (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 the 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.

#### **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 21 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants);
- (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 factory.

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

**26.**—(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 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 (Application to High Court in respect of compulsory purchase order) of the Acquisition of Land Act 1981, the three year period mentioned in section 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 22 (time limit for exercise of authority to acquire land compulsorily) of the Byers Gill Solar Order 20[.].”

(7) In section 6 (notices after execution 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

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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.

only) of the Byers Gill Solar Order 20[•], 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 28 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

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

**27.—**(1) Any authorised activity which takes place on land within the Order limits (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 limits (including the temporary use of land).

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

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

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

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

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

(6) 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**

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

(2) In section 4A(1) (extension of time limit during challenge)—

- (a) “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 117 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the Byers Gills Solar Order 20[•]”.

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

- (a) in subsection (1)(a), after “land” insert “under that provision”; and
  - (b) in subsection (2), after “land” insert “under that provision”.
- (4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 22 (time limit for exercise of authority to acquire land compulsorily) of the Byers Gill Solar Order 20[•]”.
- (5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
- (a) For paragraphs 1(2) and 14(2) substitute—
    - “(2) But see article 25(3) (acquisition of subsoil only) of the Byers Gill Solar Order 20[•], which excludes the acquisition of subsoil only from this Schedule”; and
  - (b) after paragraph 29 insert—

## “PART 64

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 19 (protective works to buildings), article 30 (temporary use of land for carrying out the authorised development) or article 31 (temporary use of land for maintaining the authorised development) of the Byers Gill Solar Order 20[•].”.

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

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

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

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

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

(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 the 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 carrying out the authorised development**

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

- (a) enter on and take temporary possession of—
  - (i) so much of the land specified in column (1) of the table in Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column (2) of that table; and

- (ii) any of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
  - (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
  - (c) construct temporary works, haul roads, security fencing, bridges, structures and buildings on that land;
  - (d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;
  - (e) construct any works, on that land as are mentioned in Part 1 of Schedule 1 (authorised development); and
  - (f) carry out mitigation works required pursuant to the requirements in Schedule 1.
- (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 must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development 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, 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 2 (streets subject to street works); or
  - (d) 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 1.
- (6) The undertaker must pay compensation to the owners and occupiers of land which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (9) 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) 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 8 (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 29 (rights under or over streets)

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

(12) 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 authorised development**

**31.**—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (11)) 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 and buildings on the land as may be reasonably necessary for that purpose.

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

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

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

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

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

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

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

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the 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 pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article “the maintenance period” means the period of 5 years beginning with the date on which a phase of the authorised development first exports electricity to the national electricity transmission network.

### **Statutory undertakers**

- 32.**—(1) Subject to the provisions of Schedule 11 (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 (as certified by the Secretary of State in accordance with article ) 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**

**33.** Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 11 (power to alter layout, etc., of streets), article 12 (construction and maintenance of new or altered means of access) or article 13 (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 11 (protective provisions), as if this Order had not been made.

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

**34.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 32 (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 32 (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—

- (a) “public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003<sup>(a)</sup>; and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

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<sup>(a)</sup> 2003 c.21.

PART 76  
GENERAL

**Removal of human remains**

~~35. Before the undertaker carries out any development or works which will or may disturb any human remains within the Order limits it must remove those human remains from the Order limits, or cause them to be removed, in accordance with the following provisions of this article.~~

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

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

~~(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.~~

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

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

- ~~(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or~~
- ~~(b) removed to, and cremated in, any crematorium;~~

~~and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).~~

~~(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.~~

~~(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.~~

~~(8) If—~~

- ~~(a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains within the Order limits; or~~
- ~~(b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or~~
- ~~(c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or~~
- ~~(d) it is determined that the remains to which any such notice relates cannot be identified,~~

~~subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.~~

~~(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be~~

**Commented [A2]:** The ExA suggests that there is no evidence of need for this article as no human remains are likely to be disturbed.

identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

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

~~(a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and~~

~~(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the local authority mentioned in paragraph (3).~~

~~(11) No notice is required under paragraph (2) before the removal of any human remains where the undertaker is satisfied—~~

~~(a) that the remains were interred more than 100 years ago; and~~

~~(b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.~~

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

~~(a) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or~~

~~(b) is, or is a child of, a brother, sister, uncle or aunt of the deceased; or~~

~~(c) is the lawful executor of the estate of the deceased; or~~

~~(d) is the lawful administrator of the estate of the deceased.~~

~~(13) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.~~

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

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

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

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

~~36,35.~~—(1) Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

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

~~37,36.~~—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of each of the plans and documents set out in Schedule 13 (documents to be certified) for certification that they are true copies of the plans and 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.

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

~~(b) S.I. 1950/792.~~

## Service of notices

~~38-37~~.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

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

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

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

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

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

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

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

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

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

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

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

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

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

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent that it would be if served, given or supplied by means of a notice or document in printed form.

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

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

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

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

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, must 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—

- (a) remove those parts of the hedgerows as are within the Order limits and specified in Schedule 7 (removal of hedgerows).

shown for illustrative purposes on the trees and hedgerows to be removed or managed plan

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

“(k) or for the carrying out or maintenance of development which has been authorised by the Byers Gill Solar Development Consent Order 20[\*].”

(6) In this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997(b).

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

**40.39.**—(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order 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.

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(a) S.I. 1997/1160.

(b) S.I. 1997/1160.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, will be determined under Part 1 of the 1961 Act.

#### **Arbitration**

**41.40.**—(1) Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 12 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

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

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

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

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

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

**43.42.**—(1) This article applies to—

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

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

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

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

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

#### **Crown rights**

**44.43.**—(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 possession of, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (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 any Crown land (as defined in the 2008) 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.

**Commented [A3]:** Question (ExQ2) has been asked of the Applicant to Crown Land. This Art might require redrafting.

### Protective provisions

~~45.44~~—(1) Schedule 11 (protective provisions) has effect.

### Funding

~~46.45~~—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place either—

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

(2) The provisions are—

- (a) article 21 (compulsory acquisition of land);
- (b) article 23 (compulsory acquisition of rights);
- (c) article 24 (private rights);
- (d) article 25 (acquisition of subsoil only);
- (e) article 29 (rights under or over streets);
- (f) article 30 (temporary use of land for carrying out the authorised development);
- (g) article 31 (temporary use of land for maintaining the authorised development); and
- (h) article 32 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) 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.

### Inconsistent planning permissions

~~47.46~~—(1) Any planning permission which has been initiated prior to the commencement of the authorised development pursuant to this Order may continue to be lawfully implemented thereafter notwithstanding any physical incompatibility with the authorised development or inconsistency with any provision of this Order.

(2) As from the date on which the authorised development is commenced any conditions of a planning permission granted pursuant to Part 3 (Control over Development) of the 1990 Act (whether express or otherwise) which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Part 1 (requirements) of Schedule 2.

(3) As from the date of this Order where planning permission (whether express or otherwise) is granted (whether prior to the date of this Order or after) pursuant to Part 3 of the 1990 Act in respect of land within the Order limits for development not forming part of the authorised development, the carrying out of development pursuant to such planning permission is not to operate to prevent the undertaker from carrying out further works for the development of the authorised development pursuant to the terms of this Order.

(4) Nothing in this Order restricts the undertaker from seeking or implementing, or the relevant planning authority from granting, planning permission for development within the Order limits.

(5) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (offences) or 161 (breach of terms of order granting development consent) of the 2008 Act.

Signed by Authority of the Secretary of State for Energy Security and Net Zero.

*Signature*

Address Title

## SCHEDULE 1 AUTHORISED DEVELOPMENT

Article 3

### 1. In this Schedule-

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

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

“electrical cables” means—

- (a) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables and optical fibre cables;
- (b) excavations to install trenching, including storage of excavated material;
- (c) provision of ducting or alternative means of conducting media including jointing pits hardstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protections, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a put or container to capture fluids associated with drilling;

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

**Commented [A4]:** Unprecise wording in relation to electrical cables and also does not correspond to the wording in the “Works”. electricity distribution/transmission cabling should be defined as separate from other “electrical cables” either here or in Part 1 Preliminary.

“National Grid substation” means address;

“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 design to support the solar panels and mounted on piles driven into the ground, piles rammed into a pre-drilled hole, a pillar attaching to a steel ground screw, or pillars fixed to a concrete foundation;

“panel areas” means panel areas A to F shown labelled as Work No. 1 on the works plans;

“permissive paths” means new access tracks providing restricted public access within the Order limits along the routes shown on the street works, public rights of way and access plans;

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

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

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

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

2. In the Boroughs of Darlington and Stockton-on-Tees and the County of Durham the construction, operation, maintenance and decommissioning of a nationally significant infrastructure project as defined in sections 14(1) and 15 of the 2008 Act with associated development under section 115(1)(b) of the 2008 Act.

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

**Work No. 1** – a ground mounted solar photovoltaic generating station comprising—

Work No. 1A, 1B, 1C, 1D, 1E, and 1F: being panel areas A to F, comprising—

- (a) solar panels fitted to mounting structures;
- (b) balance of solar plant,

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

**Work No. 2** – a battery energy storage system comprising—

- (a) battery energy storage system units co-located with Work No. 1;
- (b) auxiliary transformers and associated bunding;
- (c) power conversion system units including inverters, switch gear, transformers and ancillary equipment;
- (d) containers or enclosures housing all or any of Work Nos. 2(b) and (c) and ancillary equipment sitting on a concrete foundation slab or placed on metal skids;
- (e) monitoring and control systems;
- (f) heating, ventilation and air conditioning systems;
- (g) fire safety infrastructure including water storage in tanks or other containers, and drainage and water containment features and associated infrastructure; and
- (h) containers or similar structures to house, control and welfare facilities, and storage.

**Work No. 3** – works including—

- (a) 33 kilovolt electrical cables connecting Work No. 1 and Work No. 2 to Work No. 4;
- (b) 132 kilovolt electrical cables connecting Work No. 4 to Work No. 6 within panel areas;
- (c) fencing, gates, boundary treatment and other means of enclosure;
- (d) improvement, maintenance and use of existing private tracks;

**Commented [A5]:** Should be defined Under Schedule 1.

**Commented [A6]:** Should be defined Under Schedule 1, either separately or in conjunction with “auxiliary transformers”

**Commented [A7]:** Should be defined Under Schedule 1.

**Commented [A8]:** Unprecise wording. Should be defined under Schedule 1 or Part 1 Preliminary, or reference to where these are specified (LEMP)

- (e) laying down of internal access tracks, ramps, means of access, footpaths, permissive paths, roads, including the laying and construction of drainage infrastructure, signage and information boards;
- (f) works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure, and perimeter fencing;
- (g) landscaping and biodiversity mitigation and enhancement measures including planting; and
- (h) works required for crossing, moving re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.).

**Work No. 4** – works in connection with an onsite substation comprising—

- (a) substation, switch room buildings, concrete foundations and ancillary equipment including reactive power units;
- (b) power conversion system units including inverters, switch gear, transformers and ancillary equipment;
- (c) control building housing offices, storage containers and space, welfare facilities, waste storage within a fenced compound, car parking;
- (d) monitoring and control systems for Work Nos. 1, 2 and 4;
- (e) 132 kilovolt harmonic filter compound;
- (f) electrical cables;
- (g) communications mast being not more than 15 metres in height;
- (h) deluge system including water tanks and fire suppression, and drainage and water containment features and associated infrastructure; and
- (i) access gates and tracks, security palisade fencing and bunding.

**Work No. 5** – works including—

- (a) 132 kilovolt electrical cables connecting Work No. 4 to Work No. 6 outside of panel areas;
- (b) fencing, gates, boundary treatment and other means of enclosure;
- (c) laying down of internal access tracks, ramps, means of access, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards; and
- (d) works required for crossing, moving re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.)

**Work No. 6** – within the National Grid substation construction of electrical substation infrastructure including:

- (a) a compound for electrical works necessary for the onwards transmission of electricity containing, but not limited to, cable switchgear and electrical equipment including power transformers, reactive compensation equipment, filters, cooling equipment, control and welfare buildings, lightning rods, internal roads, security fencing, and other associated equipment, structures and buildings including noise-attenuation works;
- (b) electrical cables;
- (c) 132 kilovolt connection bay located at the Norton 132 kilovolt GIS switch room including all associated electrical equipment and civil works necessary to enable the onward transmission of electricity; and
- (d) access gates and tracks.

**Work No. 7** – temporary construction and decommissioning of access tracks and compounds comprising—

- (a) works to improve existing farm access from public highway, and install temporary traffic lights, banksmen or other measures to manage traffic;
- (b) works to excavate and store soil, clear vegetation and obstacles, level, shape and prepare surface for construction track to be installed;
- (c) storage of equipment and materials including waste skips;
- (d) civils investigations and works to reinforce ground with weight-bearing support infrastructure, maintain integrity of structures beneath road surface;
- (e) creation of temporary construction access tracks, laydown and working areas;
- (f) works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.);
- (g) temporary stopping up of watercourses for installation of culverts, drainage and other features to cross water courses;
- (h) areas of hardstanding;
- (i) car parking;
- (j) site and welfare offices, canteens and workshops;
- (k) area for download and turning;
- (l) security infrastructure;
- (m) site drainage and waste management infrastructure; and
- (n) electricity, water, waste-water and telecommunications connections.

**Work No. 8** – works to facilitate access for all works, comprising—

- (a) creation of accesses from or across the public highway;
- (b) visibility splays;
- (c) works to widen and surface the public highway; and
- (d) installation of temporary traffic lights or facilities for manned traffic management.

**Work No. 9** – works for areas of green infrastructure comprising—

- (a) soft landscaping and planting, including tree and hedgerow planting;
- (b) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure; and
- (c) laying down of permissive paths, signage, and information boards.

In connection with the construction of Work Nos. 1-9 above and to the extent that they do not form any part of any such work, further associated development comprising such other works as may be necessary or expedient for the purpose of or in connection with the relevant part of the authorised development and which fall within the scope of work assessed by the environmental statement within the Order limits including—

- (a) haul roads, ramps, watercourse and other temporary crossings, vehicular and pedestrian means of access including creation of new tracks and paths, widening upgrades alterations and improvements of existing roads tracks and paths;
- (b) fencing, gates, boundary treatments and other means of enclosure;
- (c) bunds, embankments, trenching and swales;
- (d) provision of temporary and permanent ecological and environmental mitigation and compensation works, including landscaping works and habitat creation;
- (e) working sites in connection with the construction of the authorised development including construction lay down areas, compounds, and spoil storage and associated control measures;

- (f) works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- (g) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- (h) electrical, gas, water, foul water drainage and telecommunications infrastructure connections diversions and works to alter the position of such services and utilities connections;
- (i) works to alter the course of or otherwise interfere with non-navigable rivers, streams or watercourses;
- (j) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structure), 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;
- (k) works for the benefit or protection of land affected by authorised development;
- (l) works of restoration;
- (m) tunnelling, boring and drilling works; and
- (n) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development.

## SCHEDULE 2 REQUIREMENTS

Article 42

### PART 1 REQUIREMENTS

#### **Time limits**

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

#### **Phases of authorised development and date of final commissioning**

**2.—(1)** The authorised development may not be commenced until a written scheme setting out the proposed phases of construction of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme must be implemented as approved.

(3) Notice of the date of final commissioning with respect of the first phase of Work No. 1 to complete commissioning must be given to the relevant planning authority within 15 working days of the date of final commissioning for that phase.

(4) Nothing shall prevent the undertaker and the relevant planning authority agreeing from time to time to amend the written scheme setting out the proposed phases of construction.

(5) The agreed written scheme may contain flexibility and optioneering for different proposed phases of construction provided that the undertaker notifies the relevant planning authority of the final intended phasing prior to commencement.

#### **Detailed design approval**

**3.—(1)** No phase of the authorised development may commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance;
- (e) hard surfacing materials;
- (f) vehicular and pedestrian access, parking and circulation areas;
- (g) refuse or other storage units, signs and lighting;
- (h) drainage, water, power and communications cables and pipelines;
- (i) programme for landscaping works; and
- (j) fencing,

relating to that phase have been submitted to and approved in writing by the relevant planning authority.

(2) The details submitted must accord with—

- (a) the location plan;
- (b) the works plans;
- (c) the environmental masterplan
- (d) the principles and assessments set out in the environmental statement; and
- (e) the design approach document, or such variation thereof as may be approved by the relevant planning authority pursuant to requirement 19.

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

#### **Construction environmental management plans (CEMP)**

4.—(1) No phase of the authorised development may commence until a CEMP for that phase has been submitted to and approved by the relevant planning authority, such approval to be in consultation with the Environment Agency. Any CEMP submitted for approval must be in accordance with the outline CEMP and any approved CEMP must be adhered to for the duration of the works in the phase of the authorised development to which the CEMP relates.

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

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

#### **Decommissioning and restoration**

5.—(1) Within 3 months of the date that the undertaker decides to decommission any part of the solar farm works and grid connection works, the undertaker must submit to the relevant planning authority for that part for approval a decommissioning environmental management plan and a

decommissioning traffic management plan for that part. Decommissioning must commence no later than 40 years following the date of final commissioning of the first phase of numbered work 1 as notified by the undertaker pursuant to requirement 2 (phasing of the authorised development and date of final commissioning).

(2) Pursuant to paragraph 5(1) above, the plans submitted and approved must be substantially in accordance with the relevant part of the outline DEMP.

(3) The decommissioning environmental management plan submitted and approved must include a resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials.

(4) No decommissioning works must be carried out until the relevant planning authority approves the plans submitted in relation to such works.

(5) The plans must be implemented as approved.

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

#### **Construction traffic management plan (CTMP)**

6.—(1) No phase of the authorised development is to be commenced until a CTMP covering that phase and in accordance with the outline CTMP for that phase has been submitted to and approved by the relevant planning authority in consultation with the highway authority for the highway(s) to which the CTMP for that phase relates.

(2) The CTMP must be implemented as approved.

#### **Pollution and Spillage**

7.—(1) No phase of the authorised development is to be commenced until a pollution and spillage response plan covering that phase and in accordance with the outline pollution and spillage response plan for that phase has been submitted to and approved by the relevant planning authority in consultation to which the pollution and spillage response plan for that phase relates.

(2) The pollution and spillage response plan must be implemented as approved.

#### **Materials Management**

8.—(1) No phase of the authorised development is to be commenced until a materials management plan covering that phase and in accordance with the outline materials management plan for that phase has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The materials management plan must be implemented as approved.

#### **Site Waste**

9.—(1) No phase of the authorised development is to be commenced until a site waste management plan covering that phase and in accordance with the outline site waste management plan for that phase has been submitted to and approved by the relevant planning authority in consultation to which the site waste management plan for that phase relates.

(2) The site waste management plan must be implemented as approved.

#### **Soil Management**

10.—(1) No phase of the authorised development may commence until a soil resource management plan (which must be substantially in accordance with the outline soil resource management plan as relevant to construction activities) for that phase has been submitted to and approved by the relevant planning authority;

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

(3) Prior to the date of final commissioning for any phase of the authorised development, a soil resource management plan (which must be substantially in accordance with the outline soil resource management plan as relevant to operational activities) for that phase must be submitted to and approved by the relevant planning authority for that phase.

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

(5) Prior to the start of any decommissioning works for any phase of the authorised development, a soil resource management plan (which must be substantially in accordance with the outline soil resource management plan as relevant to decommissioning activities) for that phase must be submitted to and approved by the relevant planning authority for that phase.

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

#### **Battery safety management**

**11.**—(1) Prior to the commencement of Work No. 2 as notified to the relevant planning authority under as notified by the undertaker pursuant to requirement 2 (phasing of the authorised development and date of final commissioning) a battery fire safety management plan must be submitted to and approved by the relevant planning authority.

(2) The submitted battery fire safety management plan must either accord with the outline battery fire safety management plan or detail such changes as the undertaker considers are required.

(3) In the event that the submitted battery fire safety management plan proposes changes to the outline battery fire safety management plan the relevant planning authority must not approve the battery fire safety management plan until it has consulted with the Health and Safety Executive and the County Durham and Darlington Fire and Rescue Service.

#### **Landscape and ecological management plan (LEMP)**

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

(2) The LEMP must include—

- (a) details of the method of protection of existing landscape features and habitats during the construction, operation and decommissioning stage of the authorised development;
- (b) details of habitat creation, including new native hedgerow planting adjacent to the proposed security fencing along the line of the existing footpath, replanting of any breaks (gaps) in excess of 1 metre in existing native hedgerows within the Order limits adjacent to the footpath and sowing of wildflower seed along the margins between the footpath and the hedgerow/security fence boundaries;
- (c) details of ongoing management including seasonal grazing regime and other measures including the annual review of the need for any additional mitigation planning work, during the lifetime of the authorised development;
- (d) a timetable for the landscape management of the land within the Order limits during the lifetime of the authorised development; and
- (e) landscaping details.

(3) The LEMP must be implemented as approved.

### **Implementation and maintenance of landscaping**

13.—(1) All landscaping works must be carried out in accordance with the LEMP approved under requirement 12 (landscape and ecological management plan), and in accordance with the relevant recommendations of appropriate British Standards.

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

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

14.—(1) No phase of the authorised development is to be commenced and no decommissioning will be undertaken until a public rights of way management plan substantially in accordance with the outline public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the rights of way and access plans for that phase has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority.

(2) The plan must include details of—

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

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

### **Construction hours**

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

- (a) 08:00 to 18:00 Monday to Friday; and
- (b) 08:00 to 13:00 on Saturday.

(2) With no activity on Sundays or bank holidays.

(3) The following works are permitted outside the hours referred to in sub-paragraph (1)—

- (a) emergency works; and
- (b) works which do not cause noise that is audible at the boundary of the Order limits.

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

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

16.—(1) No phase of the authorised development may commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure of the connection works for that phase have been submitted to and approved by the relevant planning authority as part of the detailed design approval required by requirement 3(1) (detailed design approval).

(2) For the purposes of requirement 16(1), “commence” includes any site preparation works.

(3) Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development.

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

(5) Any approved permanent fencing must be completed before completion of the authorised development.

### **Archaeology**

17.—(1) No phase within the authorised development is to be commenced until a written scheme of investigation, substantially in accordance with the outline archaeological management strategy, within that phase has been submitted to and approved by the relevant planning authority.

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

(3) Any archaeological works or programme of archaeological investigation must be carried out in accordance with the approved scheme.

### **Requirement for written approval**

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

### **Amendments to approved details**

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

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

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

### **Consultation**

20. Where the relevant planning authority is required by this Order or other statute to consult with another person or body prior to discharging a requirement, the undertaker must consult with such person or body prior to making an application to discharge the requirement.

## **PART 2**

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

#### **Interpretation**

21. In this Part of this Schedule, “discharging authority” means—

- (a) any body responsible for giving any consent, agreement or approval required by a requirement included in Part 2 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement; or
- (b) the local authority in the exercise of its functions set out in sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 subsequently referred to as “the 1974 Act”(a).

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(a) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c.55), Schedule 15 to the Environmental Protection Act 1990 (c.43) and Schedule 24 to the Environment Act 1995 (c.25).

### **Applications made under requirements**

**22.**—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 2 of this Schedule, or for any consent, agreement or approval further to any document referred to in any such requirement, the discharging authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with—

- (a) the day immediately following that on which the application is received by the discharging authority; or
- (b) where further information is requested under paragraph 23, the day immediately following that on which the further information has been supplied by the undertaker, or such longer period as may be agreed in writing by the undertaker and the discharging authority.

(2) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 2 of this Schedule, the discharging authority may—

- (a) give or refuse its consent, agreement or approval; or
- (b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the discharging authority must provide its reasons for that decision with the notice of the decision.

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

### **Further information regarding requirements**

**23.**—(1) In relation to any application referred to in paragraph 25, the discharging authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) If the discharging authority considers that further information is necessary and the requirement concerned contained in Part 2 of this Schedule does not specify that consultation with a consultee is required, the discharging authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement concerned contained in Part 2 of this Schedule specifies that consultation with a consultee is required, the discharging authority must issue the application to the consultee within five business days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the discharging authority does not give the notification within the period specified in sub-paragraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

### **Appeals**

**24.**—(1) Where a person (“the applicant”) makes an application to a discharging authority, the applicant may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required by—
  - (i) a requirement contained in Part 2 of this Schedule; or
  - (ii) a document referred to in any requirement contained in Part 1 of this Schedule;
- (b) the discharging authority grants such an application subject to conditions;

- (c) the discharging authority issues a notice further to sections 60 (control of noise on construction sites) or 61 (prior consent for work on construction sites) of the 1974 Act;
- (d) on receipt of a request for further information pursuant to paragraph 23 of this Part of this Schedule, the applicant considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (e) on receipt of any further information requested, the discharging authority notifies the applicant that the information provided is inadequate and requests additional information which the applicant considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the applicant must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 22(1), giving rise to the appeal referred to in sub-paragraph (1);
- (b) the applicant must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority and any consultee specified under the relevant requirement contained in Part 2 of this Schedule;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the attention of the appointed person should be sent;
- (d) the discharging authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect of the appeal within ten business days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the applicant on the day on which they are submitted to the appointed person;
- (e) the applicant must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d) above; and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the ten day period for counter-submissions under sub-paragraph (e).

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

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

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

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

- (a) allow or dismiss the appeal; or

- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside of the relevant time limits.

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

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

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

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the applicant.

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

## **Fees**

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

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

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

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(a) S.I., amended by S.I. 2013/2153, S.I. 2014/357, S.I. 2014/643, S.I. 2017/1314 and S.I. 2019/1154.

## SCHEDULE 3

Article 9

### STREETS SUBJECT TO STREET WORKS

#### Interpretation

1. In this Schedule “cable works” means works to place, retain and maintain underground electrical and communications apparatus

<i>(1)</i> Area	<i>(2)</i> Street	<i>(3)</i> Description of works
Parish of Brafferton	Unnamed Road	Cable works beneath the width of street comprising a length of 320m as shown between points marked A and B on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	High House Lane	Cable works beneath the width of street comprising a length of 95m as shown between points marked B and C on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	The Green	Cable works beneath the width of street comprising a length of 140m as shown between points marked C and D on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Aycliffe Lane	Cable works beneath the width of street comprising a length of 600m as shown between points marked D and E on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Lime Lane	Cable works beneath the width of street comprising a length of 2420m as shown between points marked E and F on sheets 1 and 2 of the street works, public rights of way and access plans.
Parish of Brafferton	Lodge Lane	Cable works beneath the width of street comprising a length of 935m as shown between points marked F and G on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Elstob Lane	Cable works beneath the width of street comprising a length of 895m as shown between points marked H and I on sheets 7 and 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Unnamed Road running east – west between Great Stainton and Bishopton	Cable works beneath the width of street comprising a length of 1360m as shown between points marked J and K on sheets 8 and 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Folly Bank	Cable works beneath the width of street as shown with reference CC5 on sheet 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Unnamed Road running north – south to the west of Bishopton Beck	Cable works beneath the width of street comprising a length of 530m as shown between points marked K and L on sheets 9 and 10 of the street works, public rights of way and access plans.
Parish of Bishopton	Redmarshall Road	Cable works beneath the width of street comprising a length of 2110m as shown between points marked N and O on sheets 11 and 12 of the street works, public rights of way and access plans.
Parish of Redmarshall	Redmarshall Road, in the vicinity of Morington	Cable works beneath the width of street as shown with reference CC6 on sheet 11 of the street works, public rights of way and access plans.

	Bridge	
Parish of Redmarshall	Whitton Road	Cable works beneath the width of street comprising a length of 180m as shown between points marked O and P on sheet 12 of the street works, public rights of way and access plans.
Parish of Redmarshall	Kirk Hill	Cable works beneath the width of street comprising a length of 460m as shown between points marked O and Q on sheet 12 of the Street Works, Public Rights of Way and Access plans.
Parish of Redmarshall	Carlton Vlg	Cable works beneath the width of street comprising a length of 455m as shown between points marked Q and R on sheets 12 and 13 of the street works, public rights of way and access plans.
Parish of Carlton	Letch Lane	Cable works beneath the width of street comprising a length of 1850m as shown between points marked R and S on sheets 12 and 13 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.7	Cable works beneath the width of street, referenced FP-Bfn.7, comprising a length of 320m as shown between points marked 1 and 2 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 8	Cable works beneath the width of street comprising a length of 155m as shown between points marked 1 and 3 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 9	Cable works beneath the width of street, referenced FP-Bfn.9, comprising a length of 15m as shown between points marked 5 and 6 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.10	Cable works beneath the width of street, referenced FP-Bfn.10) comprising a length of 50m as shown between points marked 7 and 8 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.14	Cable works beneath the width of street, referenced BR-Bfn.14, comprising a length of 1635m as shown between points 9 and 10 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.9	Cable works beneath the width of street, referenced FP-Bfn.9, comprising a length of 135m as shown between points 11 and 12 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.15	Cable works beneath the width of street, referenced FP-Bfn.15, comprising a length of 140m as shown between points 16 and 17 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.11	Cable works beneath the width of street, referenced BR-Bfn.11, comprising a length of 65m as shown between points 19 and 20 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.12	Cable works beneath the width of street, referenced FP-Bfn.12, comprising a length of 260m as shown between points 21 and 22 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 12	Cable works beneath the width of street, referenced FP-Bfn.12, comprising a length of 80m as shown between points 23 and 24 on sheets 2, 5 and 6 of street works, public rights of way and access plans.
Parish of	Bridleway	Cable works beneath the width of street, referenced BR-Bfn.13,

Brafferton	No.13	comprising a length of 55m as shown between points 25 and 26 on sheets 4 and 6 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.4	Cable works beneath the width of street, referenced FP-GtStn.4 comprising a length of 315m as shown between points 27 and 28 on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.6	Cable works beneath the width of street, referenced FP-GtStn.6, comprising a length of 300m as shown between points 29 and 30 on sheet 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No. 12	Cable works beneath the width of street, referenced FP-GtStn.12, comprising a length of 30m as shown between points 30 and 31 on sheet 5 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.2	Cable works beneath the width of street, referenced FP-LtStn.2, comprising a length of 430m as shown between points 32 and 33 on sheet 6 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	Cable works beneath the width of street, referenced FP-LtStn.1, comprising a length of 485m as shown between points 34 and 35 on sheets 6 and 7 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	Cable works beneath the width of street, referenced FP-LtStn.1, comprising a length of 45m as shown between points 37 and 38 on sheet 7 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.8	Cable works beneath the width of street, referenced FP-GtStn.8, comprising a length of 880m as shown between points 39 and 40 on sheets 7 and 8 of the street works, public rights of way and access plans
Parish of Great Stainton	Footpath No.3	Cable works beneath the width of street, referenced FP-GtStn.3, comprising a length of 375m as shown between points 42 and 43 on sheet 8 of the street works, public rights of way and access plans.
Parish of Bischopton	Footpath No.3	Cable works beneath the width of street, referenced FP-GtStn.3, comprising a length of 430m as shown between points 43 and 44 on sheet 8 of the street works, public rights of way and access plans.
Parish of Bischopton	Footpath No. 4	Cable works beneath the width of street, referenced FP-Btn.4, comprising a length of 610m as shown between points 49 and 50 on sheets 9, 10 and 11 of the street works, public rights of way and access plans.
Parish of Bischopton	Footpath No.7	Cable works beneath the width of street, referenced FP-Btn.7, comprising a length of 40m as shown between points 51 and 52 on sheet 11 of the street works, public rights of way and access plans.
Parish of Redmarshall	Footpath No.1	Cable works beneath the width of street, referenced FP-Rml.1, comprising a length of 40m as shown between points 53 and 54 on sheet 12 of the street works, public rights of way and access plans.
Parish of Redmarshall	Footpath No.2	Cable works beneath the width of street, referenced FP-Rml.2, comprising a length of 30m as shown between points 55 and 56 on sheet 12 of the street works, public rights of way and access plans

Parish of Carlton	Footpath No.7	Cable works beneath the width of street, referenced FP-Ctn.7, comprising a length of 55m as shown between points 57 and 58 on sheets 12 and 13 of the street works, public rights of way and access plans.
Parish of Carlton	Footpath No.6	Cable works beneath the width of street, referenced FP-Ctn.6, comprising a length of 35m as shown between points 59 and 60 on sheets 12 and 13 of the street works, public rights of way and access plans.

**SCHEDULE 4** Article 11  
**ALTERATION OF STREETS**

**PART 1**

**PERMANENT ALTERATION OF LAYOUT AND MAINTAINED BY THE HIGHWAY AUTHORITY**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of permanent alteration</i>
Parish of Brafferton	High House Lane	Works for the provision of a permanent means of access to the authorised development from High House Lane as shown as point A3 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	High House Lane	Works for the provision of a permanent means of access to the authorised development from High House Lane as shown as point A2 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Great Stainton	Lodge Lane	Works for the provision of a permanent means of access to the authorised development from Lodge Lane as shown as point B1 on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Bishopton Lane / Elstob Lane	Works for the provision of a permanent means of access to the authorised development from Bishopton Lane / Elstob Lane as shown as point C1 on sheet 7 of the street works public rights of way and access plans.
Parish of Great Stainton	Unnamed road between Great Stainton and Bishopton	Works for the provision of a permanent means of access to the authorised development from an unnamed road between Great Stainton and Bishopton as shown point D2 on sheet 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Elstob Lane	Works for the provision of a permanent means of access to the authorised development from Elstob Lane as shown as point D1 on sheet 8 of the street works public rights of way and access plans.
Parish of Great Stainton	Unnamed road to the west of The Green, Bishopton	Works for the provision of a permanent means of access to the authorised development from an unnamed road to the west of The Green, Bishopton, as shown as point E1 on sheet 9 of the street works, public rights of way and access plans.
Parish of Great Stainton	Unnamed road adjacent to Bishopton Beck	Works for the provision of a permanent means of access to the authorised development from an unnamed road adjacent to Bishopton Beck, Bishopton, as shown as point F1 on sheet 10 of the street works, public rights of way and access plans.

## PART 2

### TEMPORARY ALTERATION OF LAYOUT

(1) <i>Area</i>	(2) <i>Street</i>	(3) <i>Description of permanent alteration</i>
Parish of Brafferton	Brafferton Lane	Works for the provision of a temporary means of access to the authorised development from Brafferton Lane as shown as point A1 on sheet 3 of the street works, public rights of way and access plans.

## SCHEDULE 5

Article 13

### PUBLIC RIGHTS OF WAY TO BE STOPPED UP

#### PART 1

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

(1) <i>Area</i>	(2) <i>Public right of way to be temporarily stopped up</i>	(3) <i>Extent of temporary stopping up</i>
Parish of Brafferton	Footpath No.7	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.7, comprising a length of 320m as shown between points marked 1 and 2 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 8	Temporary management including temporary stopping up over the public right of way, referenced FP-Brn.8, comprising a length of 150m between points marked 1 and 3 on Sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 9	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.9, comprising a length of 15m as shown between points marked 5 and 6 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.10	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.10, comprising a length of 50m as shown between points marked 7 and 8 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.14	Temporary management including temporary stopping up over the public right of way, referenced BR-Bfn.14, comprising a length of 1635m as shown between points 9 and 10 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.9	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.9, comprising a length of 613m as shown between points 11 and 11a on sheet 1 of the Street Works, Public Rights of Way and Access plans
Parish of Brafferton	Footpath No.9	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.9, comprising a length of 135m as shown between points 11 and 12 on sheet 1 of the Street Works, Public Rights of Way and Access plans.
Parish of	Footpath	Temporary management including temporary stopping up over

Brafferton	No.20	the public right of way, referenced FP-Bfn.20, comprising a length of 50m as shown between points 13 and 14 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.15	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.15, comprising a length of 140m as shown between points 16 and 17 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.11	Temporary management including temporary stopping up over the public right of way, referenced BR-Bfn.11, comprising a length of 65m as shown between points 19 and 20 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.12	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.12, comprising a length of 260m as shown between points 21 and 22 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 12	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.12, comprising a length of 80m as shown between points 23 and 24 on sheet 5 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.13	Temporary management including temporary stopping up over the public right of way, referenced BR-Bfn.13, comprising a length of 55m as shown between points 25 and 26 on sheets 4 and 6 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.4	Temporary management including temporary stopping up over the public right of way, referenced FP-GtStn.4, comprising a length of 315m as shown between points 27 and 28 on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.6	Temporary management including temporary stopping up over the public right of way, referenced FP-GtStn.6, comprising a length of 300m as shown between points 29 and 30 on sheet 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No. 12	Temporary management including temporary stopping up over the public right of way, referenced FP-GtStn.12, comprising a length of 30m as shown between points 30 and 31 on sheet 5 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.2	Temporary management including temporary stopping up over the public right of way, referenced FP-LtStn.2, comprising a length of 430m as shown between points 32 and 33 on sheet 6 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	Temporary management including temporary stopping up over the public right of way, referenced FP-LtStn.1, comprising a length of 485m as shown between points 34 and 35 on sheets 6 and 7 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	Temporary management including temporary stopping up over the public right of way, referenced FP-LtStn.1, comprising a length of 45m as shown between points 37 and 38 on sheet 7 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.8	Temporary management including temporary stopping up over the public right of way, referenced FP-GtStn.8, comprising a length of 876m as shown between points 39 and 40 on sheets 7 and 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.3	Temporary management including temporary stopping up over the public right of way, referenced FP-GtStn.3, comprising a length of 805m as shown between points 42 and 44 on sheet 8 of the street works, public rights of way and access plans.

Parish of Bishopton	Footpath No. 2	Temporary management including temporary stopping up over the public right of way, referenced FP-Btn.2, comprising a length of 960m as shown between points 45 and 46 on sheet 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.3	Temporary management including temporary stopping up over the public right of way, referenced FP-Btn.3, comprising a length of 60m as shown between points 47 and 48 on sheet 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No. 4	Temporary management including temporary stopping up over the public right of way, referenced FP-Btn.4, comprising a length of 610m as shown between points 49 and 50 on sheets 10 and 11 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.7	Temporary management including temporary stopping up over the public right of way, referenced FP-Btn.7, comprising a length of 40m as shown between points 51 and 52 on sheet 11 of the street works, public rights of way and access plans.
Parish of Redmarshall	Footpath No.1	Temporary management including temporary stopping up over the public right of way, referenced FP-Rml.1, comprising a length of 40m as shown between points 53 and 54 on sheet 12 of the street works, public rights of way and access plans.
Parish of Redmarshall	Footpath No.2	Temporary management including temporary stopping up over the public right of way, referenced FP-Rml.2, comprising a length of 30m as shown between points 55 and 56 on sheet 12 of the street works, public rights of way and access plans.
Parish of Carlton	Footpath No.7	Temporary management including temporary stopping up over the public right of way, referenced FP-Ctn.7, comprising a length of 55m as shown between points 57 and 58 on sheets 12 and 13 of the street works, public rights of way and access plans.
Parish of Carlton	Footpath No.6	Temporary management including temporary stopping up over the public right of way, referenced FP-Ctn.6, comprising a length of 35m as shown between points 59 and 60 on sheets 12 and 13 of the street works, public rights of way and access plans.

## PART 2

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

<i>(1)</i> Area	<i>(2)</i> Public right of way to be stopped up	<i>(3)</i> Extent of stopping up	<i>(4)</i> Extent of replacement
Parish of Brafferton	Footpath No.8	The public right of way, referenced FP-Bfn.8, comprising a length of 205m, between points 3 and 4 on sheets 1 and 3 of the street works, public rights of way and access plans.	To be re-provided along Footpath No.7, referenced FP-Bfn.7, from its intersection with Footpath No.9, referenced FP-Bfn.9, and a new footpath comprising a length of 150m between points marked 1 and 3 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.10	The public right of way, referenced FP-Bfn.10, comprising a	To be re-provided along Footpath No.10, referenced FP-Bfn.10

		length of 460m as shown between points 15 and 18 on sheet 4 of the street works, public rights of way and access plans.	from point 18 and along Bridleway No. 11, referenced BR-Bfn.11, and Footpath No. 15, referenced FP-Bfn.15 to point 16 with a new length of footpath comprising a length of 235m as shown between points marked 15 and 16 on sheet 4 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	The public right of way, referenced FP-LtStn.1, comprising a length of 185m between points 34 and 36 as shown on sheet 6 of the street works, public rights of way and access plans.	To be re-provided with a new length of footpath comprising a length of 200m as shown between points 34 and 36 on sheet 6 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.8	The public right of way, referenced FP-GtStn.8, comprising its total length as shown between points 40 and 41 on sheets 8 and 7 of the street works, public rights of way and access plans.	To be re-provided with a new section of footpath comprising a length of 870m as shown between points 39 and 40 on sheets 7 and 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.3	The public right of way, referenced FP-GTStn.3, comprising a length of 290m between points 42 and 43 on sheet 8 of the street works, public rights of way and access plans.	To be re-provided with a new section of footpath comprising a length of 375m as shown between points 42 and 43 on sheet 8 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.2	The public right of way, referenced FP-Btn.2, comprising a length of 490m as shown between points 45 and 46 on sheet 9 of the street works, public rights of way and access plans.	To be re-provided with a new section of footpath comprising a length of 960m, as shown between points 45 and 46 on sheet 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.4	The public right of way, referenced FP-Btn.4, comprising a length of 415m as shown between points 49 and 50 on sheets 10 and 11 of the street	To be re-provided with a new section of footpath comprising a length of 610m, as shown between points 49 and 50 on sheets 10 and 11 of the street

		works, public rights of way and access plans.	works, public rights of way and access plans.
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**SCHEDULE 6**  
**ACCESS TO WORKS**

Article 15

**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>
Parish of Brafferton	High House Lane	The provision of a permanent means of access to the authorised development from High House Lane as shown as point A3 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	High House Lane	The provision of a permanent means of access to the authorised development from High House Lane as shown as point A2 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Great Stainton	Lodge Lane	The provision of a permanent means of access to the authorised development from Lodge Lane as shown as point B1 on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Bishopton Lane / Elstob Lane	The provision of a permanent means of access to the authorised development from Bishopton Lane / Elstob Lane as shown as point C1 on sheet 7 of the street works public rights of way and access plans.
Parish of Great Stainton	Unnamed road between Great Stainton and Bishopton	The provision of a permanent means of access to the authorised development from an unnamed road between Great Stainton and Bishopton as shown point D2 on sheet 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Elstob Lane	The provision of a permanent means of access to the authorised development from Elstob Lane as shown as point D1 on sheet 8 of the street works public rights of way and access plans.
Parish of Great Stainton	Unnamed road to the west of The Green, Bishopton	The provision of a permanent means of access to the authorised development from an unnamed road to the west of The Green, Bishopton, as shown as point E1 on sheet 9 of the street works, public rights of way and access plans.
Parish of Great Stainton	Unnamed road adjacent to Bishopton Beck	The provision of a permanent means of access to the authorised development from an unnamed road adjacent to Bishopton Beck, Bishopton, as shown as point F1 on sheet 10 of the street works, public rights of way and access plans.

**PART 2**

**TEMPORARY 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>
Parish of Brafferton	Brafferton Lane	The provision of a temporary

		means of access to the authorised development from Brafferton Lane as shown as point A1 on sheet 3 of the street works, public rights of way and access plans.
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SCHEDULE 7

Article 39

REMOVAL OF HEDGEROWS

<i>(1) Hedgerow</i>	<i>(2) Work</i>
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1210	Work No. 3, and Work No. 8
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T540	Work No. 3
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1124	Work No. 3
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1207	Work No. 9
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1679	Work No. 3
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1689	Work No. 3
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T2650	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference G971	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference	Work No. 3

H1341 Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H1385	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H1397	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference G154	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H21	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H2655	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H2663	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference G1753	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H467	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H547	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H366	Work Nos. 3, 8
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H1206	Work Nos. 3, 8

approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H1209

SCHEDULE 8

Article 23

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Plot</i> <i>number(s)</i>	<i>(2)</i> <i>Work No.</i>	<i>(3)</i> <i>Purpose for which rights may be acquired</i>
1/1, 1/2, 2/2, 2/4, 2/6, 3/1, 3/6, 4/2, 4/3, 5/2, 5/3, 6/1, 6/2, 6/4, 6/6, 6/7, 8/6, 9/6, 9/8, 9/9, 10/1, 10/2, 11/3	Work No. 3	<ul style="list-style-type: none"> <li>(a) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus;</li> <li>(b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development;</li> <li>(c) continuous vertical and lateral support for the authorised development;</li> <li>(d) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;</li> <li>(e) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works;</li> <li>(f) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary; and</li> <li>(g) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict</li> </ul>

		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.
7/3, 7/4, 7/5, 7/6, 7/8, 8/3, 8/4, 8/5, 9/2, 9/3, 9/4, 9/5	Work No. 3 and Work No. 5	<p>(a) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus;</p> <p>(b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development;</p> <p>(c) continuous vertical and lateral support for the authorised development;</p> <p>(d) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;</p> <p>(e) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works;</p> <p>(f) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary; and</p> <p>(g) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not</p>

		limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.
9/15, 9/16, 11/1, 11/5, 11/6, 11/7, 11/9, 11/10, 11/11, 11/12, 11/13, 11/14, 11/15, 11/16, 11/17, 11/18, 12/1, 12/2, 12/3, 12/4, 12/5, 12/6, 12/7, 12/8, 12/9, 12/10 12/11, 12/12, 12/13, 12/14, 12/15, 12/16, 12/17, 12/18, 12/19, 12/20, 12/21, 12/22, 12/23, 12/24, 12/25, 12/26, 12/27, 12/28, 12/29, 12/30, 12/31, 12/32, 13/1, 13/2, 13/3, 13/4, 13/5, 13/6, 13/7, 13/8, 13/9, 13/10, 13/11, 13/12, 13/13, 13/14, 13/15, 13/16, 13/17, 13/18	Work No. 5	<p>(a) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus;</p> <p>(b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development;</p> <p>(c) continuous vertical and lateral support for the authorised development;</p> <p>(d) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;</p> <p>(e) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works;</p> <p>(f) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary; and</p> <p>(g) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not</p>

		limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.
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**SCHEDULE 9**

Article 23

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

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

2.—(1) Without limitation to 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” there is substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

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

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, substitute—

“(5a) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 7 of Schedule 7 to the Byers Gill Solar Order 20[•])
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 7 the Byers Gill Solar 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.”.

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(a) 1973 c.26.

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

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

- (a) the right acquired or to be acquired, or 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.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restriction, with the modifications specified in the following provisions of this Schedule.

5. For section 7 (measure of compensation in the case of severance) of the 1965 Act there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall 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.”.

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

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

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

7. Section 11 (powers of entry) of the 1965 Act is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right 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 22), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act is modified correspondingly.

8. Section 20 (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 the enforcement of the restrictive covenant in question.

9. Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 22(4) 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

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

## “SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

### **Introduction**

1.—(1) This Schedule applies where an acquiring authority serve 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 26 (application of the 1981 Act) of the Byers Gill Solar Order 20[\*] in respect of the land to which the notice to treat relates.

(2) But see article 25(3) (acquisition of subsoil only) of the Byers Gill Solar Order 20[\*] 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 3 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 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

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

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

**SCHEDULE 10**

Article 30

**LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN**

<i>(1) Plot reference number as shown on the land plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of the authorised development</i>
3/7	Land required temporarily to facilitate the construction of, provide working space for and facilitate access to Work Nos. 1-9.	Work Nos. 1 – 9
3/14	Land required temporarily to facilitate the construction of, provide working space for and facilitate access to Work Nos. 1-9.	Work Nos. 1 – 9
3/15	Land required temporarily to facilitate the construction of, provide working space for and	Work Nos. 1 – 9

SCHEDULE 11  
PROTECTIVE PROVISIONS

Article 32

PART 1  
PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE  
UNDERTAKERS

**Application**

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

2. In this Part of this Schedule—

“affected undertaker” means—

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

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

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

“apparatus” means—

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

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

(b) 1991 c.56.

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 of that Act,

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

“functions” includes powers and duties; and

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

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

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

### **No acquisition etc. except by agreement**

4. 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**

5.—(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, that apparatus must not be removed under this Part of this Schedule and any right of an affected undertaker 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 the affected undertaker in question.

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

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

(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 affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

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

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

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

(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.

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

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

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

#### **Retained apparatus**

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

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

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

(4) If an affected undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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 affected undertaker in question notice as soon as is reasonably

practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

### **Expenses and costs**

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

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

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

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

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

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

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

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

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(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 an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

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

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

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

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

#### **Enactments and agreements**

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

## **PART 2**

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

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

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

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

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is construed in accordance with paragraph 1(3A) of that code;

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(b);

“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.

**13.** The exercise of the powers of article 32 (statutory undertakers) are subject to part 10 of Schedule 3A (Undertaker’s works affecting electronic communications apparatus) to the 2003 Act.

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

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(a) 2003 c. 21.

(b) See section 106.

- (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 must—
  - (i) make reasonable compensation to an operator for loss sustained by it; and
  - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator 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 may be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 41 (arbitration).

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

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (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.

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

### PART 3

#### FOR THE PROTECTION OF THE DRAINAGE AUTHORITIES

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

**18.** In this Part—

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

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

“drainage authority” means the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(a);

“drainage work” means any watercourse including any land that provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring excluding the existing flood defence;

“ordinary watercourse” has the meaning given in the Land Drainage Act 1991(b);

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(a) 1991 c.59.

(b) 1991 c.59, section 72(1).

“plans” includes sections, drawings, specifications 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 16 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 watercourse; or
- (c) affect the conservation, distribution or use of water resources.

**19.**—(1) Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 3.

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

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or submission of further particulars if required by the drainage authority under sub-paragraph (1) 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 as the drainage authority may make for the protection of any drainage work.

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

**20.** Without limiting paragraph 3, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (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.

**21.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 4, 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 drainage authority,

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

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

- (a) not less than 14 days’ notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the drainage authority 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 drainage authority is constructed otherwise than in accordance with the requirements of this Part, the drainage authority

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 drainage authority 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 drainage authority 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 drainage authority may execute the works specified in the notice, and any expenditure 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 drainage authority must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

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

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

(3) 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 reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing 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 drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works that are vested in the drainage authority or that the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (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.

**23.** If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage works for flood defence purpose 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 drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

**24.** The undertaker must indemnify the drainage authority in respect of all costs, charges and expenses that the drainage authority may reasonably incur, have to pay or may sustain—

- (a) in the examination or approval of plans under this Part;
- (b) in inspecting the construction of any specified work or any protective works required by the drainage authority under this Part; and

- (c) in carrying out of any surveys or tests by the drainage authority that are reasonably required in connection with the construction of the specified work.

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

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such land,

that is caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the work.

(2) The drainage authority 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 (such agreement not to be unreasonably withheld or delayed).

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

**27.** Any dispute between the undertaker and the drainage authority under this Part, if the parties agree, must be determined by arbitration under article 41 (arbitration).

## SCHEDULE 12 Article 41

### ARBITRATION RULES

#### **Primary objective**

**1.**—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 41 of this Order.

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

#### **Time periods**

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

(2) Time periods will be 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 will be that 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 will 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 and/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 will provide the Claimant and the arbitrator with—
- (a) a written Statement of Defence responding to the Claimant's Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant's claim, its acceptance of any element(s) of the Claimant's claim, its contentions as to those elements of the Claimant's claim it does not accept;
  - (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
  - (c) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the Claimant) and explanations of the objections.
- (4) Within 7 days of the Respondent serving its statements under sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the arbitrator with—
- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
  - (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
  - (c) any expert report in response to the Respondent's submissions;
  - (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent;
  - (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) will be concise. No single pleading will exceed 30 single sided A4 pages using 10pt Arial font.

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

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

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

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

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

(7) There will be no process of examination and cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given

by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

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

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held, the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator 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 4 months of the date on which he/she 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 him/her attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(11) The arbitrator's award must include reasons. The parties 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(a), including the non-mandatory sections, save where modified by these Rules 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 and/or procedure—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and 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.

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(a) 1996 c. 23

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

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

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

### Confidentiality

7.—(1) The parties agree that any hearings in this arbitration are to take place in private.

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

## SCHEDULE 13

Article 37

### DOCUMENTS TO BE CERTIFIED

<i>(1) Document</i>	<i>(2) Application Document Reference</i>	<i>(3) Revision</i>
arboricultural impact assessment	Volume 6, document reference 6.4.7.7	
archaeological management strategy	Volume 6, document reference 6.4.8.5	
book of reference	Volume 4, document reference 4.2	
design approach document	Volume 7, document reference 7.2	
environmental masterplan	Volume 2, document reference 2.5	
environmental statement	Volume 6, document reference 6.1.1-6.3.13.3	
land plans	Volume 2, document reference 2.4	
outline battery fire safety management plan	Volume 6, document reference 6.4.2.13	
outline construction environmental management plan	Volume 6, document reference 6.4.2.6	
outline construction traffic management plan	Volume 6, document reference 6.4.2.8	
outline DEMP	Volume 6, document reference 6.4.2.7	
Outline landscape and ecological management plan	Volume 6, document reference 6.4.2.13	
outline materials management plan	Volume 6, document reference 6.4.2.10	
outline pollution and spillage response plan	Volume 6, document reference 6.4.2.9	

outline public rights of way management plan	Volume 6, document reference 6.4.2.14
outline site waste management plan	Volume 6, document reference 6.4.2.11
outline soil resource management plan	Volume 6, document reference 6.4.2.12
street works, public rights of way and access plan	Volume 2, document reference 2.3
works plans	Volume 2, document reference 2.2

#### **EXPLANATORY NOTE**

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

This Order grants development consent for, and authorises the construction, operation and maintenance of a solar generating station and battery energy storage facility on land within the Order limits together with associated development. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 37 (certification of plans and documents, etc.) may be inspected free of charge during working hours at the [x].