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**BYERS GILL SOLAR DEVELOPMENT  
CONSENT ORDER 202[•]**

**EXPLANATORY MEMORANDUM**

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## 1 GLOSSARY

<b>"1990 Act"</b>	The Town and Country Planning Act 1990.
<b>"1991 Act"</b>	The New Roads and Street Works Act 1991.
<b>"2008 Act"</b>	The Planning Act 2008 which is the legislation that governs applications for NSIPs, including pre- application consultation and publicity, the examination of applications and decision making by the Secretary of State.
<b>"Applicant"</b>	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. In the Order, the Applicant is referred to as the "undertaker".
<b>"Application"</b>	The Application for a DCO made to the Secretary of State under section 37 of the 2008 Act in respect of the Authorised Development. A DCO is required pursuant to section 31 of the 2008 Act because the Authorised Development comprises a NSIP under section 14(1)(a) and section 15 of the 2008 Act by virtue of it being a generating station in England with a capacity of over 50MW.
<b>"Authorised Development"</b>	The development to which the Application relates and which is described in Schedule 1 to the Order.
<b>"Book of Reference"</b>	The Book of Reference, which accompanies the Application (and which has been updated throughout the Examination), which is a reference document providing details of all land ownership interests within the Order Land with reference to the Land Plans.
<b>"DCO"</b>	A Development Consent Order made by the relevant Secretary of State pursuant to the 2008 Act to authorise a NSIP.
<b>"EIA"</b>	Environmental Impact Assessment. The assessment of the likely significant environmental effects of the Authorised Development undertaken in accordance with the EIA Regulations.
<b>"EIA Regulations"</b>	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 setting out how the EIA of NSIPs must be carried out and the procedures that must be followed.
<b>"Environmental Statement"</b>	The Environmental Statement which accompanies the Application, documenting the findings of the EIA.
<b>"Explanatory Memorandum"</b>	This document, which explains the intended purpose and effect of the Order and the authorisations and powers it seeks.
<b>"Land Plans"</b>	The plans which accompany the Application, showing the Order Land.
<b>"MW"</b>	Megawatt.
<b>"NSIP"</b>	A Nationally Significant Infrastructure Project that must be authorised by the making of a DCO under 2008 Act.

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<b>"Other Consents and Licenses"</b>	The Other Consents and Licences document, which accompanies the Application, which explains the Applicant's approach to obtaining all other necessary consents to deliver the Authorised Development beyond the Order.
<b>"Order"</b>	Byers Gill Solar Farm Development Consent Order 20[•], being the DCO that would be made by the Secretary of State authorising the Authorised Development, a draft of which has been submitted as part of the Application (and further revisions of which have been submitted throughout the Examination).
<b>"Order Land"</b>	The land over which the Order would authorise compulsory acquisition and temporary possession.
<b>"Order Limits"</b>	The limits of the land to which the Application relates and shown on the Works Plans.
<b>"PV"</b>	Photovoltaic.
<b>"Relevant Planning Authority"</b>	Darlington Borough Council, Stockton-on-Tees Borough Council and Durham County Council are each the relevant planning authority for those parts of the Authorised Development that are in their respective administrative areas.
<b>"Statement of Reasons"</b>	The Statement of Reasons which accompanies the Application and sets out the justification for the acquisition of or interference with the Order Land.
<b>"Street works, public rights of way and access plans"</b>	means those plans showing the extent of breaking open of street works, temporary stopping up, permanent stopping up, alteration of streets and access works present within the Order limits.
<b>"Works Plans"</b>	The plans, which accompany the Application, showing the Order Limits and the numbered works that form the Authorised Development and as described in Schedule 1 to the Order.

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## 2 INTRODUCTION

### 2.1 Overview

- 2.1.1 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and schedules to, the Order, as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>1</sup>.
- 2.1.2 Regulation 5(2)(c) requires this memorandum to explain "the purpose and effect of provisions in the draft order".

### 2.2 Purpose of the order

- 2.2.1 This Explanatory Memorandum has been prepared on behalf of the Applicant. It forms part of the Application.
- 2.2.2 The Applicant is seeking development consent for the Authorised Development.
- 2.2.3 A detailed description of the Authorised Development is included in Chapter 2 of the Environmental Statement.
- 2.2.4 The majority of the Authorised Development, including the solar PV modules, on-site substation, Norton Substation and BESS is located within the administrative boundary of Darlington Borough Council. The eastern part of the 132kV cable route crosses into the administrative boundary of Stockton-on-Tees Council. The northern extent of the Order Limits borders Durham County Council's administrative area.
- 2.2.5 A DCO is required for the Authorised Development as it falls within the definition and thresholds for a NSIP under sections 14(1) and 15 of the 2008 Act. This is because it consists of a generating station with a gross electrical output capacity exceeding 50MW, this being a ground mounted solar PV generating station.
- 2.2.6 The DCO, if made, would be known as the Byer Gill Solar Farm Development Consent Order 202[\*]. A draft of the DCO has been submitted with the Application.

#### **Nationally Significant Infrastructure Project**

- 2.2.7 The Authorised Development is a nationally significant infrastructure project ("**NSIP**") within sections 14(1)(a) and 15 of the 2008 Act (the "**2008 Act**"). The Applicant, therefore, requires development consent under the 2008 Act in order to construct and operate the Authorised Development. Development consent may only be granted by order, following an application to the Secretary of State (section 37 of the 2008 Act).

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<sup>1</sup> S.I. 2009/2264

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- 2.2.8 As the Authorised Development is an NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a development consent order must be made to the Secretary of State, care of the Planning Inspectorate ("**PINS**"), under section 37 of the 2008 Act.
- 2.2.9 Schedule 1 (authorised development) to the draft Order contains a list of numbered works comprising the Authorised Development.

### **2.3 Associated development**

- 2.3.1 The draft Order specifically authorises development which is associated with the NSIP. The Secretary of State may, under the provisions of section 115 of the 2008 Act, grant consent for development that is associated with the NSIP ("**associated development**").
- 2.3.2 Guidance on associated development has been issued by the Secretary of State. In this guidance associated development is described as being "typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project" (paragraph 6) and requiring "a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development" (paragraph 5).
- 2.3.3 In some cases, there may be some overlap between associated development and works which form part of the NSIP. All elements of the authorised development either constitute part of the NSIP or are associated development within the meaning of Section 115(2) of the 2008 Act, and so can properly be authorised by the Order.
- 2.3.4 As part of the authorised development, the battery energy storage system will be associated development.

### **2.4 Ancillary matters**

- 2.4.1 The draft Order also contains several ancillary matters, i.e. provisions not consisting of development.
- 2.4.2 The draft Order seeks to apply and modify statutory provisions relating to the compulsory acquisition of land. It is for this reason that under section 117 and 120(5) of the 2008 Act the Order must be made by way of a statutory instrument. The draft Order is therefore in that form.

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- 2.4.3 Other ancillary matters include the temporary and permanent stopping up of lengths of existing highway and private means of access in the vicinity of the Authorised Development, the imposition of traffic regulation measures (including the application of speed limits), the creation of new points of access to works, and the application and disapplication of legislation.

### **3 PROVISIONS OF THE ORDER**

- 3.1.1 The purpose and effect of the provisions of the draft Order are now explained in sequence. The Order consists of 45 operative provisions, each referred to as articles and 13 Schedules. The articles are considered below in numerical order (split between the different Parts of the Order), and Schedules are considered along with the article which introduces them or to which they relate.

- 3.1.2 Whilst the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265) has been repealed, the draft Order is based on the model provisions as well as other development consent orders that have been made to date. The draft Order has been influenced by the following recent development consent orders: Longfield Solar Farm Order 2023, the Hornsea Four Offshore Wind Farm Order 2023, the Awel y Môr Offshore Wind Farm Order 2023, the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, the A417 Missing Link Development Consent Order 2022 and the Little Crow Solar Park Order 2022.

#### **3.2 Part 1 (Preliminary) and Part 2 (Principal Powers)**

- 3.2.1 Articles 1 (Citation and commencement) and 2 (Interpretation) are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect. This article did not appear in the model provisions. However, it is a standard article that is included in all development consent orders.

- 3.2.2 Article 2 (Interpretation) provides for the interpretation of the rest of the Order, including the Schedules. It is a standard article and was included in the model provisions as article 1.

- 3.2.3 Where appropriate, some Schedules also contain provisions setting out what terms mean in that particular Schedule.

- 3.2.4 Article 2 makes alterations to the model provisions to accommodate departures from model provisions elsewhere in the Order, and to add required definitions, including:

- 3.2.4.1 definitions of documents submitted as part of the Application and which are referred to in the Order have been added. These documents are more fully identified in the table in Schedule 13 to the Order;

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- 3.2.4.2 the definition of "authorised development" means the development and Associated Development described in Schedule 1 to the Order, which is development within the meaning of section 31 of the 2008 Act as defined in section 32 of the 2008 Act. The definitions of "ancillary works" and "authorised project" from the model provisions have not been used in the Order, instead the concept of Associated Development is included in the definition of "authorised development" and is described in detail in Schedule 1, as it is considered that this drafting is more effective (and is common practice);
- 3.2.4.3 the definition of "commence" is defined so as to exclude "site preparation works". This exclusion is required to enable the undertaker to carry out certain preparatory works prior to the submission of relevant details for approval under the requirements contained in Schedule 2 to the Order so that certain works can be carried out without "commencing" the authorised development. This is to allow a small element of necessary flexibility in how the authorised development can be constructed. The works identified include pre-commencement activities such as surveys, monitoring and site investigations which are considered appropriate as the nature of these works (i.e. non-intrusive, above ground works or actions) means they are not expected to give rise to environmental effects requiring mitigation.
- 3.2.4.4 a definition of "maintain" has been added to make clear what activities are authorised under Article 4 during the operation of the authorised development. The definition has been drafted to directly reflect the nature and context of the authorised development, which will need to be properly maintained, managed, and protected throughout its operational lifetime. The drafting, therefore, reflects this operational period and likely framework of maintenance that will be required while enabling technological and practice advancement and improvements within identified environmental performance standards. Therefore, some flexibility must be built-in to what maintenance of the authorised development will involve, particularly to keep up with changing standards and controls and advances in technology;
- 3.2.4.5 the definition of "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. In addition, the Land Plans show



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land within the Order Limits, but outside of the Order Land, in relation to which no compulsory acquisition powers are included in the Order. The Land Plans also provide clarity as to land that is excluded from both the Order Limits and Order Land; and

- 3.2.4.6 the definition of "Order limits" means the limits shown on the Land Plans and Works Plans within which the authorised development may be carried out and land acquired or used.
- 3.2.5 Paragraphs (2) to (7) of Article 2 have been added to provide clarity that all distances, directions and lengths are approximate; that references to numbered works are to the works as described in Schedule 1 and shown on the Works Plans; as to how the word "includes" is to be construed; that any statutory body includes that body's successor in title; how references to rights over land should be construed; and that all areas described in the Book of Reference are approximate.
- 3.2.6 **Article 3 (Development consent etc. granted by the Order)** grants development consent for the authorised development. Schedule 1 describes the authorised development.
- 3.2.7 This is based on article 2 of the model provisions, with the only substantive difference being that article 3(1) does not refer to consent being granted for ancillary works, since there are not considered to be any such works in this case.
- 3.2.8 Article 3(2) was not included in the model provisions but has been included in previous orders. For example, this article is as found in Article 5(2) of the A417 Missing Link Development Consent Order 2022. It provides that any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of the Order. Because the Order amends and disapplies various enactments that apply to and affect the authorised development, or would otherwise do so, this helps to clarify the interaction between the provisions of the Order and other legislation.
- 3.2.9 Article 3(2) is also necessary to ensure that there are no local acts or other legislation that might hinder the construction and operation of the authorised development. Although the Applicant has carried out a proportionate search for local legislation and has not found any that it considers needs to be disapplied or modified by the Order, that is not conclusive and it is possible that such legislation exists. The Applicant has therefore taken a precautionary approach in including article 3(2), which has been accepted in other orders and is well precedented. The inclusion of this provision ensures that the construction and operation of this NSIP is not jeopardised by any incompatible statutory provisions which might exist.

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- 3.2.10 In terms of the limits of the provision and how far “adjacent” extends from the Order limits, it is noted that article 20 (authority to survey and investigate the land) grants the Applicant the power to enter not only onto land within the Order limits, but also onto other land “which may be affected by the authorised development”. The extent of ‘adjacent’ land would therefore need to be judged on a case by case basis and in practice would be to the extent necessary for the construction and operation of the authorised development.
- 3.2.11 **Article 4 (Maintenance of authorised development)** sets out the scope within which the undertaker may maintain the development and is required so that the undertaker has power to maintain the authorised development. Powers of maintenance are subject to the other provisions of the Order and any agreements made under the Order.
- 3.2.12 Article 4 was included in the model provisions as article 3 and as an example of use is as found in Article 6 of the A417 Missing Link Development Consent Order 2022.
- 3.2.13 **Article 5 (Operation of generating station)** permits the operation and use of the generating station comprised in the authorised development and is included pursuant to section 140 of the 2008 Act. Article 5(2) specifically preserves the need for the undertaker to obtain any other operational consent that may be needed for the generating station, in addition to the Order. It is included so that the undertaker has powers to operate the generating station.
- 3.2.14 The drafting of Article 5 adopted by the Applicant is in keeping with recently made energy DCOs. For example, Article 5 is as found in Article 4 of the Longfield Solar Farm Order 2023, Article 11 of the Little Crow Solar Park Order 2022, Article 5 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and Article 4 of the Awel y Môr Offshore Wind Farm Order 2023.
- 3.2.1 **Article 6 (Consent to transfer benefit of Order)** is a standard article included in numerous made DCOs that makes provision for the transfer of any or all of the benefit of the provision of the Order. This Article is required in order that the undertaker has commercial flexibility to transfer the benefit of the Order to a third party, subject to the provisions of the Article. Under paragraph (4), the consent of the Secretary of State is needed before the undertaker can transfer or lease the Order except where:
- 3.2.1.1 the transferee or lessee is the holder of a licence under section 6 (licences authorising supplies etc.) of the 1989 Act;
  - 3.2.1.2 the transferee or lessee is a holding company or subsidiary of the undertaker;

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- 3.2.1.3 the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant; or
- 3.2.1.4 the transfer or grant is made to Northern Powergrid Holding Company.
- 3.2.2 Article 6(3) has been amended from the model provisions so that it refers to 'transfer or grant', which is considered to be more accurate than 'agreement'.
- 3.2.3 The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims. The provision that the undertaker is able to transfer the Order to a holding company or subsidiary is to allow commercial flexibility for the undertaker in the event that it would be preferable that a connected corporate entity takes the benefit of all or part of the Order. Article 6(5) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Article 6(6) to (8) provide further detail on the notification that is to be given. This is as found in Article 33 of the Longfield Solar Farm Order 2023.
- 3.2.4 Article 6(9) provides that where the undertaker has transferred the benefit of the Order or granted the benefit of the Order then:
- 3.2.4.1 the transferred benefit will include any rights that are conferred and any obligations that are imposed;
- 3.2.4.2 the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker;
- 3.2.4.3 the benefits or rights conferred under paragraph (1) of the article are subject to the same restrictions, liabilities and obligations as applies to the undertaker.
- 3.2.5 Article 6 is as substantially found in Article 33 of the Longfield Solar Farm Order 2023 and Article 6 of the Awel y Môr Offshore Wind Farm Order 2023.
- 3.2.6 **Article 7 (Disapplication and modification of legislative provisions)** disapplies two statutory provisions. Section 120 of the 2008 Act makes comprehensive and wide-ranging provision about what may be included in a DCO, as part of the 2008 Act's integrated approach to consenting. Section 120(5) provides that, subject to specified limitations and requirements, a DCO may apply, modify, or exclude a statutory

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provision which relates to any matter for which provision may be made in the Order; and make amendments, repeals, or revocations of statutory provisions of local application. It is common for DCOs to contain such provisions, although the scope and content inevitably differs according to the circumstances of different projects. Article 7 is present in some form in Article 6 of the Longfield Solar Farm Order 2023, Article 6 of the Little Crow Solar Park Order 2022, Article 8 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 7 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 3 of the A417 Missing Link Development Consent Order 2022.

3.2.7 Article 7 provides for the disapplication of the following specified provisions:

3.2.7.1 section 23 of the Land Drainage Act 1991, which prohibits e.g. the obstruction and other works in watercourses without the consent of the relevant lead local flood authority; and

3.2.7.2 the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land.

3.2.8 These disapplications are sought on the basis that they address matters whose merits and acceptability can, and will, already have been sufficiently considered and resolved if the Order is made, notably in relation to the provisions under the Land Drainage Act 1991 through protective provisions for the protection of the relevant drainage authorities (Part 3 of Schedule 11 to the Order). Such matters should therefore not be the subject of further regulatory consideration or control, which would cause unnecessary uncertainty and duplication, and may unjustifiably delay the implementation of the Authorised Development.

3.2.9 Section 150 of the Planning Act 2008 only allows requirements for prescribed consents to be disapplied if the relevant body has consented to this. The relevant consents, where applicable, have been sought in parallel with the negotiation of appropriate protective provisions, which will ensure that the disapplications will not prejudice the statutory objectives and responsibilities of the relevant regulators. The Applicant's status of these negotiations along with its approach to obtaining the other consents required for the Authorised Development is set out in greater detail in the Other Consents and Licences document.

3.2.1 **Article 8 (Defence to proceedings in respect of statutory nuisance)** provides that no person is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction or maintenance or decommissioning of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974 or which cannot be reasonably avoided

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as a consequence of the authorised development. Article 8 is a model provision, in recognition that such noise will arise and that provision to define its consequences in an appropriate and balanced manner will be needed. This will be true of the Authorised Development and for this reason it is necessary to include the article in the Order.

3.2.2 Article 8 has varying scope in different DCOs but is present in some form in Article 7 of the Longfield Solar Farm Order 2023, Article 7 of the Little Crow Solar Park Order 2022, Article 40 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 8 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 44 of the A417 Missing Link Development Consent Order 2022.

### 3.3 Part 3 (Streets)

3.3.1 **Article 9 (Street works)** allows the undertaker to carry out certain works to a street for the purposes of the authorised development. It is necessary because implementation of the authorised development will require works to be undertaken to streets. Schedule 3 sets out the streets that are subject to street works, and the nature of those works, thereby clarifying the extent of the powers. The authority given by this article is a statutory right for the purposes of sections 48(3) and 51(1) of 1991 Act. Certain provisions of the 1991 Act apply to works carried out under this article, subject to the provisions of article 10 (application of the 1991 Act). Article 9 is based on article 8 of the model provision.

3.3.2 Article 9 is as substantially found (although without an equivalent Clause 10 included) at Article 8 of the Longfield Solar Farm Order 2023 and Article 9 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022. Article 9 is as substantially found in Article 9 of the Awel y Môr Offshore Wind Farm Order 2023, Article 11 of the A417 Missing Link Development Consent Order 2022, and Article 8 of the Hornsea Four Offshore Wind Farm Order 2023.

3.3.3 **Article 10 (Application of the 1991 Act)** provides for the application of the 1991 Act. Although not included in the model provisions, it is as substantially found Article 10 of the Awel y Môr Offshore Wind Farm Order 2023, Article 12 of the A417 Missing Link Development Consent Order 2022 and Article 9 of the Hornsea Four Offshore Wind Farm Order 2023.

3.3.4 **Article 11 (Power to alter layout, etc., of streets)** allows the undertaker to alter the layout of or carry out any works in a street. Schedule 4 then sets out the alterations to streets. This Article is necessary because, in order to construct, operate, maintain and decommission the authorised development, the undertaker will need to alter street layouts and establish suitable accesses to ensure that the authorised development can be accessed effectively while ensuring there is minimal disruption to the local highway network.

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- 3.3.5 Article 11 is as substantially found in Article 9 of the Longfield Solar Farm Order 2023, Article 10 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and Article 14 of the Hornsea Four Offshore Wind Farm Order 2023.
- 3.3.6 **Article 12 (Construction and maintenance of altered streets)** provides that the permanent alterations to the streets listed in Part 1 of Schedule 4 must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed, be maintained at the undertaker's expense for a period of 12 months from their completion. Thereafter, maintenance will be the responsibility of the highway authority (paragraph (1)). In respect of any footpath, cycle track or bridleway, any construction, diversion, or alteration must be completed to the reasonable satisfaction of the local highway authority and be maintained at the undertaker's expense for a period of 12 months from their completion. Paragraphs (3) and (4) provide that the temporary alterations to the streets listed in Part 2 of Schedule 4 must be completed to the reasonable satisfaction of the street authority and maintained at the undertaker's expense, until the alterations have been restored to the reasonable satisfaction of the street authority and maintained at the undertaker's expense for a period of 12 months from the completion of the restoration. Thereafter, maintenance will be the responsibility of the street authority. The purpose of this Article is to define who will be responsible for the maintenance of altered streets following the carrying out of works and it is required to provide certainty as to who will be responsible for such maintenance.
- 3.3.7 Paragraphs (5) and (6) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic. Paragraph (7) provides that with the exception of paragraph (1) of this Article, the provisions of this Article do not apply where the undertaker is the street authority for a street in which the works are being carried out.
- 3.3.8 Article 12 is as substantially found in Article 10 of the Longfield Solar Farm Order 2023 and Article 13 of the A417 Missing Link Development Consent Order 2022.
- 3.3.9 **Article 13 (Temporary stopping up of public rights of way)** provides for the temporary stopping up and alteration or diversion of public rights of way specified in Schedule 5 for the purposes of constructing or maintaining the authorised development. It is required because, in particular, the undertaker will need to temporarily divert certain public rights of way in order to construct the authorised development.. Article 13(6) provides that compensation is payable in respect of loss suffered by the suspension of any private rights of way. This provision is required so that persons who temporarily lose private rights of way because of the suspension of public rights of way can be appropriately compensated.

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- 3.3.10 Article 13 is as substantially found in Article 11 of the Longfield Solar Farm Order 2023, Article 13(6) of the M25 Junction 28 Development Consent Order 2022, Article 12(6) of the M54 to M6 Link Road Development Consent Order 2022 and articles 15(6), 12(6), 14(6) of the A30 Chiverton to Carland Cross Development Consent Order 2020, A19/A184 Testo's Junction Alteration Development Consent Order 2018 and M20 Junction 10a Development Consent Order 2017 respectively.
- 3.3.11 **Article 14 (Public rights of way)** provides for the public rights of way specified in Parts 1 and 2 of Schedule 5 and shown on the Street works, rights of way and access Plans to be extinguished. The rights of way are extinguished following the expiry of a site notice which must be erected at each end of the way to be extinguished no less than 28 days prior to the extinguishment. Article 28 is based on article 10 of the model provisions and previous development consent orders including article 27 of the A38 Derby Junctions Development Consent Order 2023, article 28 of the A417 Missing Link Development Consent Order 2022, article 28 of the A47 Blofield to North Burlingham Development Consent Order 2022, article 27 of the A30 Chiverton to Carland Cross Development Consent Order 2020, article 25 of the M20 Junction 10a Development Consent Order 2017 and article 24 of The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016. It differs from the model provisions in that it refers to the rights of way set out in Schedule 5, rather than rights of way specified in the article itself. It also provides a different trigger for the extinguishment of existing rights of way, rather than the various options specified in paragraph (1) of the model provision (which included the date of publication of the order). Paragraph (2) of the model provision, which dealt with the creation of alternative sections of rights of way, is omitted. Instead, paragraph (2) requires the undertaker to erect a site notice at each end of the right(s) of way to be extinguished at least 28 days in advance and must ensure a copy of this site notice is provided to the local highway authority for their information at the same time and for that notice to include details of any public rights of way being provided in substitution. The definitions in paragraph (3) of the model provision are omitted as they are not used.
- 3.3.12 Paragraph (4) sets out that no permanent extinguishment can take place until either the permanent replacement set out in Schedule 5, Part 2, column 4 is completed or a temporary alternative route has been completed.
- 3.3.13 **Article 15 (Access to works)** is a model provision which gives the undertaker powers to form new or to improve existing means of access for the purposes of the authorised development, as set out in Schedule 6 to the Order. This article is necessary because the undertaker will need to create or improve existing means of access for the purposes of the authorised development. For clarity, Schedule 6 is split into Part 1 (permanent means of access to works) and Part 2 (temporary means of access). The Article also provides that other means of access or works can also be provided in other locations

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reasonably required for the authorised development with the approval of the Relevant Planning Authority, in consultation with the highway authority. In addition, the Article also requires the undertaker to restore any access that has been temporarily created under the Order to the reasonable satisfaction of the street authority.

- 3.3.14 Article 15 is as found in Article 12 of the Longfield Solar Farm Order 2023 and a substantially found in Article 12 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and Article 12 of the Hornsea Four Offshore Wind Farm Order 2023.
- 3.3.15 **Article 16 (Agreements with street authorities)** is a model provision which authorises street authorities and the undertaker to enter into agreements relating to strengthening, improvement, repair or reconstruction of any streets, stopping up, prohibition, restriction, alteration or diversion of any street, works authorised under Articles 9 (street works), 11 (power to alter layout, etc of streets) and 12 (construction and maintenance of altered streets) of the Order and the adoption of works. The Applicant has removed reference to the ability to enter into an agreement with a street authority to allow the construction of any new street and the maintenance of any bridge or tunnel carrying a street over or under the authorised development as those powers are not required for the authorised development.
- 3.3.16 Article 16 is as substantially found in Article 13 of the Longfield Solar Farm Order 2023, Article 13 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and Article 13 of the Hornsea Two Offshore Wind Farm Order 2023.
- 3.3.17 **Article 17 (Traffic regulation measures)** Paragraph (1) includes a general power that would authorise temporary traffic regulation measures, for the purposes of the construction or decommissioning of the Authorised Development. The inclusion of this power is justified as it allows a degree of flexibility to respond to changing conditions on the road network over the lifetime of the Authorised Development. The general power is appropriately regulated as it may only be exercised with the consent of the traffic authority concerned. The Article is not in the general model provisions but is common in orders granting permission for infrastructure projects where it is necessary in the interests of public safety during construction of the authorised development for the undertaker to put in place some temporary restrictions on road usage. The powers under this Article are provided for in section 120(5)(a) of the 2008 Act.
- 3.3.18 Article 17 is as found in Article 14 of the Longfield Solar Farm Order 2023 and as found in some form in Article 19 of the A417 Missing Link Development Consent Order 2022.



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### 3.4 Part 4 (Supplemental Powers)

- 3.4.1 **Article 18 (Discharge of water)** is a model provision that allows the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction or maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain and subject to certain other conditions, and its purpose is to establish a clear statutory authority for doing so. The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed. This has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016. References to the harbour authority have also been removed as they are not relevant to the Order. In relation to a drainage authority, these provisions are disapplied as sufficiently detailed provision will be made by the relevant protective provisions (see Part 4 of Schedule 8 (protective provisions)).
- 3.4.2 Article 18 is as substantially found in Article 15 of the Longfield Solar Farm Order 2023, Article 9 of the Little Crow Solar Park Order 2022, Article 14 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 14 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 21 of the A417 Missing Link Development Consent Order 2022.
- 3.4.3 **Article 19 (Protective work to buildings)** is a model provision which is included in most made DCOs to date. Its purpose is to provide powers to the undertaker to enter any building and land within its curtilage to survey to determine whether protective works are needed and to carry out protective works to buildings within the Order Land, subject to a number of conditions including the service of 14 days' notice (except in cases of emergency) and the payment of compensation in the event that any loss or damage arises. Where the undertaker serves a notice stating the intention to carry out protective works or to enter a building or land within its curtilage there is ability for a counter notice to be served by the land owner/occupier within a period of 10 days from the day on which the notice was served.
- 3.4.4 Protective works can also be undertaken after the carrying out of the works forming part of the authorised development for a period of 5 years from the date of completion of the part of the authorised development carried out in vicinity of the building. This wording is a minor update from the model provision wording, as the undertaker considered that the phrase 'open for use' which is used in the model provision is not appropriate. This Article is required because there are buildings within, and in close proximity to, the Order Land that might feasibly require surveys and protective works as a result of the authorised development.

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- 3.4.5 The Article also includes compensation provisions in relation to the consequences of the protective works being undertaken, but also where the protective works are undertaken but they are inadequate to protect the building or land from damage (within a period of 5 years from the date of final commissioning).
- 3.4.6 Article 19 is as found in Article 16 of the Longfield Solar Farm Order 2023 and as substantially found in Article 16 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 22 of the A417 Missing Link Development Consent Order 2022.
- 3.4.7 **Article 20 (Authority to survey and investigate the land)** is a model provision that enables the undertaker to enter onto any land within the Order Limits or which may be affected by the authorised development for the purpose of carrying out monitoring or surveys, including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions, including a requirement of at least 14 days' notice on every owner and occupier of the land and the payment of compensation in the event that any loss or damage arises. This power is essential to implementation of the authorised development, for example in verifying ground conditions or the presence of statutory undertakers' apparatus.
- 3.4.8 The model provision has been modified so that no trial holes are to be made:
- 3.4.8.1 in land held by or in right of the Crown without the consent of the Crown;
  - 3.4.8.2 in land located within the highway boundary without the consent of the highway authority; or
  - 3.4.8.3 in a private street without the consent of the street authority.
- 3.4.9 Paragraph (6), which provides for deemed consent in cases where there is no response to an application for consent under this article, was not included in the model provisions but is now a standard provision following its inclusion in numerous previous orders. For example, Article 20(6) is as found in Article 23(6) of the A417 Missing Link Development Consent Order 2022.
- 3.4.10 The Article applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the Article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development.
- 3.4.11 Article 20 is as substantially found in Article 17 of the Longfield Solar Farm Order 2023, Article 10 of the Little Crow Solar Park Order 2022, Article 15 of the Awel y Môr

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Offshore Wind Farm Order 2023 and Article 23 of the A417 Missing Link Development Consent Order 2022.

### **3.5 Part 5 (Powers of Acquisition)**

- 3.5.1 **Article 21 (Compulsory acquisition of land)** is a model provision that provides for the compulsory acquisition of such land as is required for the authorised development, or to facilitate, or is incidental to, the authorised development. The Article is necessary to secure the delivery of the authorised development as set out in more detail in the Statement of Reasons accompanying the application. The Article is based on article 18 of the Model Provisions.
- 3.5.2 Article 21(2) makes clear that the powers in this Article are subject to the powers and restrictions in Article 23 (Compulsory acquisition of rights), Article 25 (Acquisition of subsoil only) and Article 31 (Temporary use of land for constructing the authorised development), to ensure that, where relevant, the undertaker can only acquire new rights or take temporary possession of land and cannot acquire the freehold interest in that land.
- 3.5.3 Article 21 is as found in Article 18 of the Awel y Môr Offshore Wind Farm Order 2023 and as substantially found in Article 18 of the Longfield Solar Farm Order 2023, Article 24 of the A417 Missing Link Development Consent Order 2022 and Article 18 of the Hornsea Four Offshore Wind Farm Order 2023.
- 3.5.4 **Article 22 (Time limit for exercise of authority to acquire land compulsorily)** is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition from the date on which the Order is made, via issuing notices to treat or executing general vesting declarations. The undertaker considers that 5 years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in Schedule 1 to the Order and has precedent in the majority of made DCOs to date.
- 3.5.5 Article 22 is as found in Article 19 of the Longfield Solar Farm Order 2023, Article 20 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 19 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 26 of the A417 Missing Link Development Consent Order 2022.
- 3.5.6 **Article 23 (Compulsory acquisition of rights)** enables the undertaker to acquire rights or impose restrictive covenants over the Order Land as may be required for any purpose for which the land may be acquired under Article 21 (Compulsory acquisition of land). The Article also provides that rights may be created as well as enabling the undertaker to acquire those already in existence.

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- 3.5.7 The Article provides that, in respect of the Order Land set out in Schedule 8 (Land in which only new rights etc. may be acquired) the undertaker's powers of acquisition of new rights and imposition of restrictive covenants are limited to the purposes set out in that Schedule. The ability to acquire new rights and impose restrictive covenants is required in order that the undertaker can construct and maintain the authorised development, and it ensures that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) during the implementation of the authorised development. Providing the undertaker with powers to acquire rights only and impose restrictive covenants only over the Order Land set out in Schedule 8 allows the undertaker to reduce the area of land that is required to be compulsorily acquired for the purposes of the authorised development, and therefore allows for a more proportionate exercise of compulsory acquisition powers.
- 3.5.8 Paragraphs (5) and (6) provide that where the undertaker proposes the acquisition of new rights or the imposition of restrictive covenant for the purpose of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State transfer the powers to the relevant statutory undertaker.
- 3.5.9 Article 23 is as substantially found in Article 20 of the Longfield Solar Farm Order 2023, Article 21 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 20 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 27 of the A417 Missing Link Development Consent Order 2022.
- 3.5.10 **Article 24 (Private rights)** is a model provision that (i) extinguishes private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of the compulsory acquisition powers contained in Article 21 (Compulsory acquisition of land); (ii) provides that private rights and restrictions over land cease to have effect in so far as their continuance would be inconsistent with the exercise of compulsory acquisition of rights or the imposition of restrictive covenants under Article 23 (Compulsory acquisition of rights); and (iii) suspends private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of temporary possession powers under the Order. This is required because it enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the authorised development.
- 3.5.11 Paragraph (4) provides that compensation is payable to any person who suffers loss as a result of the exercise of the powers in this Article and that such compensation would be payable under section 152 of the 2008 Act rather than the Compulsory Purchase Act 1965. Paragraph (8) also clarifies that references to private land include references to any trusts or incidents to which the land is subject.

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- 3.5.12 Article 24 is as substantially found in Article 21 of the Longfield Solar Farm Order 2023, Article 22 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 22 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 29 of the A417 Missing Link Development Consent Order 2022.
- 3.5.13 **Article 25 (Acquisition of subsoil only)** is a model provision that permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired (either pursuant to Article 21 or Article 23), thereby giving the undertaker the ability to minimise the extent of interests acquired from landowners. This Article is appropriate in the context of the cables or pipes to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. It therefore enables the undertaker to minimise as far as possible to extent of interests to be acquired, thereby reducing the impact on landowners. Article 25 is as found in Article 25 of The Cottam Solar Project Order 2024 and Article 25 of The Mallard Pass Solar Farm Order 2024.
- 3.5.14 **Article 26 (Application of the 1981 Act)** is a model provision which applies the general vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of compulsory acquisition powers pursuant to the Order. This provides the undertaker with the option to acquire the land via the vesting process set out in the 1981 Act rather than the notice to treat procedure. Vesting declarations allow title in the land concerned to pass to the acquiring authority more quickly than using the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure.
- 3.5.1 This Article has been amended from the model provision to incorporate and reflect the changes brought about by the Housing and Planning Act 2016 which has precedent in numerous DCOs. For example, Article 26 is substantially as found in Article 22 of the Longfield Solar Farm Order 2023 and Article 24 of the Cottam Park Solar Project Order 2024
- 3.5.2 **Article 27 (Power to override easements and other rights)** provides that in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that compensation may be payable under section 7 or 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the authorised development.

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- 3.5.3 Article 27 is as found in Article 24 of the Longfield Solar Farm Order 2023 and as substantially found in Article 19 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022.
- 3.5.4 **Article 28 (Modification of Part 1 of the Compulsory Purchase Act 1965)** modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects changes introduced by the Housing and Planning Act 2016 and is required to ensure that Part 1 of the 1965 Act is applied correctly to compulsory acquisition authorised under the Order.
- 3.5.5 Article 28 is as substantially found in Article 25 of the Longfield Solar Farm Order 2023, Article 25 of the Awel y Môr Offshore Wind Farm Order 2023, Article 30 of the A417 Missing Link Development Consent Order 2022 and Article 27 of the Cottam Park Solar Project Order 2024
- 3.5.6 **Article 29 (Rights under or over streets)** is a model provision which has been included in the majority of made DCOs to date to enable the undertaker to enter on and appropriate interests within streets where required for the purpose of the authorised development without being required to acquire that land. It is therefore required in order to reduce the amount of land that needs to be compulsorily acquired for the purposes of the authorised development.
- 3.5.7 The purpose of this Article is to allow the undertaker to appropriate and use land above or below streets within the Order Land, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3). Paragraphs (4) and (5) provide for the payment of compensation in certain circumstances.
- 3.5.8 Article 29 is as found in Article 26 of the Longfield Solar Farm Order 2023, Article 26 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 26 of The Awel y Môr Offshore Wind Farm Order 2023 and Article 32 of the A417 Missing Link Development Consent Order 2022.
- 3.5.9 **Article 30 (Temporary use of land for carrying out the authorised development)** allows the land to be temporarily used for the carrying out of the authorised development. There is a clear limit on the length of time that the undertaker can use land in this way, which in the case of land that may only be used temporarily is the end of the period of one year beginning with the date of final commissioning of that part of the authorised development for which temporary possession of the land was taken. The Article also requires the undertaker to give 28 days' notice before taking possession, and to restore the land following the temporary works.

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- 3.5.10 New wording has been added to paragraphs (4) and (5) to take into account that the Applicant may, pursuant to Article 30(1)(a)(ii), temporarily use land that it may compulsorily acquire. New wording has also been added to paragraph (4) to require that the undertaker must not remain in possession of land under this article for longer than reasonably necessary and in any event the period of temporary possession is also subject to a one year limit beginning with the date of 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.
- 3.5.11 Article 30 is as substantially found in Article 27 of the Longfield Solar Farm Order 2023, Article 27 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and Article 34 of the A417 Missing Link Development Consent Order 2022.
- 3.5.12 **Article 31 (Temporary use of land for maintaining the authorised development)** provides for the temporary use of land for maintenance of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions requiring 28 days' notice to be given and restoration of the land following the temporary possession. This Article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land.
- 3.5.13 The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of first export as opposed to the date on which the project is opened for use as this is more appropriate for this type of development.
- 3.5.14 Article 31 is as substantially found in Article 28 of the Longfield Solar Farm Order 2023, Article 28 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 28 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 35 of the A417 Missing Link Development Consent Order 2022.
- 3.5.15 **Article 32 (Statutory undertakers)** provides for the acquisition of land belonging to statutory undertakers within the Order Land. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. This article is subject to the protective provisions (see Article 46 below) included at Schedule 8 of the Order. This power is required over the whole of the Order Land.
- 3.5.16 Article 32 is as substantially found in Article 29 of the Longfield Solar Farm Order 2023, Article 29 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 29 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 36 of the A417 Missing Link Development Consent Order 2022.

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- 3.5.17 **Article 33 (Apparatus and rights of statutory undertakers in stopped up streets)** governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are temporarily stopped up by the Order. This Article is required because, without it, the statutory undertaker would not have access to the apparatus, since there would no longer be a right of way along the street. The Article is a model provision but has been amended in that paragraphs (2) onwards have been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 8.
- 3.5.18 Article 33 is as found in Article 30 of the Longfield Solar Farm Order 2023 and Article 30 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022.
- 3.5.19 **Article 34 (Recovery of costs of new connections)** provides that persons who have to create a new connection following the exercise of powers under Article 33 may recover the costs of new connections from the undertaker. It is a model provision, with the part of the model provision that referred to the permanent stopping up of streets deleted as this is not relevant in the context of the authorised development.
- 3.5.20 Article 34 is as found in Article 31 of the Longfield Solar Farm Order 2023, Article 31 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 30 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 38 of the A417 Missing Link Development Consent Order 2022.

### **3.6 Part 6 (Miscellaneous and General)**

- 3.6.1 **Article 35 (Removal of human remains)** disapplies section 25 of the Burial Act 1857 and replaces it with an alternative procedure for managing the removal of any human remains disturbed during the course of carrying out the Authorised Development. Article 35 is based upon article 17 of the model provisions and is required to ensure that the appropriate treatment of such remains does not delay the implementation of the Authorised Development. This has been included as the Applicant has not been able to rule out the presence of human remains within the Order Limits given the archaeological history of the area.
- 3.6.2 This article departs from the model provision in that sub-paragraph (11) excludes the requirement to give notice before the removal of remains which the undertaker is satisfied were interred more than 100 years ago and where no relative or personal representative of the deceased is likely to object to their removal.
- 3.6.3 Taken together the effect of Article 35 is to replace the existing and disparate regimes for regulating the removal of human remains and consolidate the applicable provisions in a single article in the Order. It is required by the undertaker to ensure that



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archaeological remains are recovered appropriately without causing unacceptable delay to the implementation of this nationally significant infrastructure project.

3.6.4 Article 35 is as found in Article 12 of the Little Crow Solar Park Order 2022 and as substantially found in Article 41 of the A417 Missing Link Development Consent Order 2022 and Article 17 of the Awel y Môr Offshore Wind Farm Order 2023.

3.6.5 **Article 36 (Operational land for purposes of the 1990 Act)** is a model provision which is included in numerous made DCOs and has the effect of ensuring that the land on which the authorised development is constructed will be "operational land" under section 264(3)(a) of the 1990 Act. The effect is to ensure that planning rights attaching to the undertaker in relation to operational land have effect as they would do if planning permission had been granted for the authorised development.

3.6.6 Article 36 is as found in in Article 35 of the Longfield Solar Farm Order 2023, Article 38 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 13 of The Little Crow Solar Park Order 2022 and Article 39 of the Awel y Môr Offshore Wind Farm Order 2023.

3.6.7 **Article 37 (Certification of plans, etc.)** is a model provision which provides for the undertaker to submit various documents referred to in the Order to the Secretary of State so that they can be certified as being true copies. The Article provide certainty as to which documents will be certified by the Secretary of State in relation to the Order.

3.6.8 **Article 38 (Service of notices)** governs how any notices that may be served under the provisions of the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the 2008 Act only apply to notices served under the 2008 Act itself and do not apply to notices served under the Order. This article was not included in the model provisions but it is based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006. This is now a common article in development consent orders.

3.6.9 Article 38 is as found in Article 15 of the Little Crow Solar Park Order 2022, Article 42 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and Article 41 of the Awel y Môr Offshore Wind Farm Order 2023. Article 34 is as substantially found in Article 41 of the Longfield Solar Farm Order 2023.

3.6.1 **Article 39 (Felling or lopping of trees and removal of hedgerows)** is based on a model provision included in numerous made DCOs which provides that the undertaker may fell or lop or cut back the roots of any tree or shrub near any part of the authorised development to prevent it obstructing or interfering with the construction, maintenance,

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operation or decommissioning of the authorised development; constituting a danger for persons using the authorised development or obstructing or interfering with the passage of construction vehicles. Provisions relating to compensation are set out in paragraphs (2) and (3) and these are identical to the model provisions. Compensation is provided for if loss or damage is caused. The provision is required for safety reasons and its applicability is appropriately limited. New paragraphs (4) and (5) have been inserted to provide the additional power for the Undertaker to remove hedgerows or part of them within the Order Limits that may be required for the purposes of carrying out the Authorised Development provided they are listed in Schedule 7. Schedule 7 lists those hedgerows within the meaning of the Hedgerow Regulations 1997 which are to be removed.

- 3.6.2 Paragraph (5) modifies Regulation 6 of the Hedgerows Regulations 1997. This is so that removal of any hedgerow to which the Regulations apply is permitted for carrying out development which has been authorised by a development consent order made pursuant to the 2008 Act. The Hedgerows Regulations allow a local planning authority to object to and prohibit interference with a hedgerow. The normal exception for development permitted by a planning permission does not apply to development authorised by a development consent order and therefore this modification is necessary to extend the exception to development authorised by a development consent order. This approach has precedent in the East Anglia ONE Offshore Wind Farm Order 2014 and the East Anglia THREE Offshore Wind Farm Order 2017.
- 3.6.3 Paragraph (6) clarifies for the purpose of this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997 and includes “important hedgerows”.
- 3.6.4 Article 39 is as substantially found in Article 36 of the Longfield Solar Farm Order 2023, in Article 16 of The Little Crow Solar Park Order 2022, Article 33 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and Article 33 of the Awel y Môr Offshore Wind Farm Order 2023.
- 3.6.5 **Article 40 (Trees subject to tree preservation orders)** provides that the undertaker may fell or lop or cut back the roots of any tree which is subject to a TPO to prevent it obstructing or interfering with the construction, maintenance, or operation of the authorised development. Compensation is provided for if loss or damage is caused. The effect of the Article is that the works it permits, where carried out to a tree protected by a TPO, are deemed to have consent, and its inclusion is therefore consistent with the purpose of DCOs being to wrap up all of the required consents for a project. The Article is a model provision included in numerous made DCOs save that it applies generally to any tree subject to a TPO made before and after the date of the Order coming into effect and either within or overhanging the Order Limits.

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- 3.6.6 The Applicant is not aware of any TPO within the Order limits but this power is necessary to interact with any future TPO granted within the Order limits.
- 3.6.7 Article 40 is as substantially found in Article 37 of the Longfield Solar Farm Order 2023.
- 3.6.8 **Article 41 (Arbitration)** is an arbitration provision and it is a departure from the model provision. Article 41, and that in the associated Schedule 12 (Arbitration rules), is as found in Article 36 of the Longfield Solar Farm Order 2023 and in Article 17 of The Little Crow Solar Park Order 2022. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.
- 3.6.9 The Article provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this period then by the Secretary of State following application by one of the parties.
- 3.6.10 It applies Schedule 12 to the Order, which sets out further detail of the arbitration process.
- 3.6.11 In addition, Article 41(2) provides that any matter for which the consent or approval of the Secretary of State is required under the Order is not subject to arbitration.
- 3.6.12 **Article 42 (Requirements, appeals, etc)** has the effect of providing that section 78 of the 1990 Act applies to the discharge of requirements included in Schedule 2 of the Order. This provides a formal process for dealing the requirements and means that the undertaker has a right of appeal to the Secretary of State if an application is made to discharge a requirement and that application is refused or not determined. Article 42 is as found in Article 18 of the Little Crow Solar Park Order 2022 and Article 43 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022.
- 3.6.13 **Article 43 (Application of landlord and tenant law)** is a model provision which is included in numerous made DCOs which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development. This provision is required to ensure that landlord and tenant law does not impede the construction, use or maintenance of the authorised development.
- 3.6.14 Article 43 is as found in Article 34 of the Longfield Solar Farm Order 2023, in Article 19 of The Little Crow Solar Park Order 2022, Article 37 of the Keadby 3 (Carbon Capture

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Equipped Gas Fired Generating Station) Order 2022 and Article 32 of the Awel y Môr Offshore Wind Farm Order 2023.

- 3.6.15 **Article 44 (Crown rights)** is not a model provision, but it reflects the terms of section 135 of the 2008 Act and is also precedented. Article 44 is as found in Article 32 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and Article 37 of the Awel y Môr Offshore Wind Farm Order 2023.
- 3.6.16 **Article 45 (Protective Provisions)** provides for Schedule 11, which protects the interests of certain statutory undertakers, to have effect. This is a model provision.
- 3.6.17 **Article 46 (Funding)** provides that the undertaker may not exercise a number of powers prior to it putting into place a guarantee or security equal to its potential liability to compensation payable under the DCO which is approved by the Secretary of State. This article is as found in Article 45 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 44 of the Mallard Pass Solar Farm Order 2024.
- 3.6.18 **Article 47 (Inconsistent planning permissions)** seeks to address any overlap of the Order with any other planning conditions and planning obligations, and to provide clarity in terms of enforcement and which consent has effect.
- 3.6.19 Paragraph (1) permits certain development authorised by way of a planning permission which has been initiated prior to the commencement of the authorised project to continue to be implemented design physical incompatibility with the authorised project.
- 3.6.20 Paragraphs (2) to (6) address inconsistencies between the Order and implementation of the authorised project and developments previously consented under the planning regime which have already been implemented.
- 3.6.21 This wording is deemed necessary following *Hillside Park Limited v Snowdonia National Park Authority [2022] UKSC 30*. In that case, the Supreme Court ruled that, unless there is an express provision otherwise, whether another planning permission may lawfully be implemented depends upon whether it remains physically possible to carry out the development authorised by the second permission considering what has already been done under the first permission.
- 3.6.22 Paragraph (6) ensures that enforcement action is not taken in respect of planning permissions granted under the 1990 Act which are inconsistent with the works and exercise of powers under the Order.
- 3.6.23 This article was not included in the Model Provisions. This article is based on article 8(2) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024.

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## **4 SCHEDULES**

### **4.1 Schedule 1 (Authorised Development)**

- 4.1.1 This Schedule describes the authorised development, which is described in detail in Chapter 2 of the Environmental Statement.
- 4.1.2 The Schedule is split into different work numbers. Each of these work numbers represents a different part of the authorised development. This split of the authorised development between different work numbers is designed to enable the Order to refer to different parts of the authorised development by citing the relevant work number.

### **4.2 Schedule 2 (Requirements)**

#### **Part 1: Requirements**

- 4.2.1 This Schedule sets out the requirements that apply to the construction, operation, maintenance, and decommissioning of the authorised development under the Order. The requirements generally follow the model provisions where these are relevant, and where they have been amended this has been informed by the outcomes of the environmental impact assessment and any discussions with the Relevant Planning Authority or other relevant statutory consultee. The requirements have a similar purpose to planning conditions.
- 4.2.2 The requirements closely relate to the mitigation set out in the Environmental Statement and a number of them specifically refer to the Environmental Statement and other application documents (in particular, 'outline' or 'framework' strategies or plans) in order to ensure that the mitigation or other measures outlined in those documents are secured.
- 4.2.3 Many of the requirements require submission of details for approval by the Relevant Planning Authority (or Relevant Planning Authorities where applicable). In some instances the Relevant Planning Authority is under a duty to consult with a third party or parties in relation to the document submitted to them. This is a departure from the model provisions. Where consultation is required under the Order it is, in each case, the Relevant Planning Authority's duty to carry it out before approving a document submitted to it (rather than, as in some of the model provisions, the undertaker's duty to carry it out before submitting the document for approval). Where it is considered that it would be particularly relevant for the Relevant Planning Authority to consult a third party, that third party has been named within the relevant requirement.
- 4.2.4 In all cases where a scheme or strategy or plan is to be submitted for approval there is a requirement for the undertaker to implement the approved scheme or strategy or plan.

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- 4.2.5 Requirement 1: **Time limit** – This requirement is based upon the model provisions and places a limit of 5 years for commencement of the Authorised Development.
- 4.2.6 Requirement 2: **Phases of authorised development and date of final commissioning** – The requirement stipulates that the Authorised Development must be not be carried out until a scheme setting out the phases of construction has been submitted to and approved by the Relevant Planning Authority. Notice of the date of final commissioning with respect to the first phase of numbered work 1 to complete commissioning must be given to both Relevant Planning Authorities within 15 working days of the date of final commissioning for that phase.
- 4.2.7 Requirement 3: **Detailed design approval** – This requirement stipulates the details that must be submitted to and approved by the Relevant Planning Authority (or authorities) before any phase of the works can commence. The details submitted must be in accordance with the location plan, works plan, environmental masterplan, the principles and assessments set out in the Environmental Statement, and the design approach document. The solar farm works and grid connection works must be carried out in accordance with the approved details. This is required so that the detailed design accords with the information submitted with the application for development consent.
- 4.2.8 Requirement 4: **Construction and environmental management plan** - Under this requirement, no phase of the Authorised Development may commence until the undertaker has submitted to the Relevant Planning Authority (acting in consultation with the Environment Agency) and received approval for a construction environmental management plan and a construction environmental management plan for biodiversity for that phase, which accord with the Outline CEMP. The construction of the Authorised Development must be in accordance with the CEMPs as approved. The CEMP for that phase must provide details of community liaison, complaints procedures, nuisance management, construction dust assessment, arboricultural impact assessment, site waste and materials management, pollution control measures, security measures and use of artificial lighting, a protocol for consultation with the Relevant Planning Authority (if contaminated land is identified), details of out of hours working procedures.
- 4.2.9 Requirement 5: **Decommissioning and restoration** - This requirement provides that 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 (or authorities, as applicable) for its approval a decommissioning environmental management plan for that part which substantially accords with the decommissioning strategy, and a decommissioning travel management plan. The decommissioning environmental management plan must also contain a resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials during decommissioning.

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Decommissioning will 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 3 (Phases of authorised development and date of final commissioning).

- 4.2.10 Requirement 6: **Construction traffic management plan (“CTMP”)** – Under this requirement, no phase of the Authorised Development may commence until the undertaker has submitted to the Relevant Planning Authority in consultation with the highway authority and received approval for a CTMP which accords with the outline CTMP.
- 4.2.11 Requirement 7: **Pollution and Spillage** – Under this requirement no phase of the authorised development may commence until a pollution and spillage response plan for that phase has been submitted to and approved by the Relevant Planning Authority.
- 4.2.12 Requirement 8: **Materials Management** – Under this requirement no phase of the authorised development may commence until a materials management plan for that phase has been submitted to and approved by the Relevant Planning Authority (acting in consultation with the Environment Agency).
- 4.2.13 Requirement 9: **Site Waste** – Under this requirement no phase of the authorised development may commence until a site waste management plan for that phase has been submitted to and approved by the Relevant Planning Authority.
- 4.2.14 Requirement 10: **Soil Management** – Under this requirement no phase of the authorised development may commence until a soil resource management plan for that phase has been submitted to and approved by the Relevant Planning Authority. All works including operation and decommissioning must be carried out in accordance with this plan or a plan substantially in accordance with the outline soil resource management plan.
- 4.2.15 Requirement 11: **Battery safety management plan (“BSMP”)** – Under this requirement, prior to the commencement of Work No. 2 a BSMP must be submitted to the Relevant Planning Authority. This must either be in accordance with the outline BSMP already submitted or set out any changes required. Any BSMP which proposes changes to the outline BSMP must not be approved by the Relevant Planning Authority until it has consulted with the relevant Fire and Rescue Service.
- 4.2.16 Requirement 11: **Landscape and ecological management plan (“LEMP”)** – Under this requirement, no phase of the Authorised Development may be commenced until the undertaker has submitted to the Relevant Planning Authority and received approval for a written LEMP for that phase which accords with the Outline LEMP, for approval to the Relevant Planning Authority. All works are required to be carried out in

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accordance with the details specified in the requirement and must provide details of the method of protection for existing landscape features and habitats, habitat creation, ongoing management, a timetable for landscape management of the land within the Order Limits during the lifetime of the scheme and landscaping details.

- 4.2.17 Requirement 13: **Implementation and maintenance of landscaping** – This requirement ensures that all works must be carried out in accordance with the LEMP and relevant recommendations of appropriate British Standards. It also sets out a replacement period of five years for any tree or shrub planted as part of an approved landscaping management scheme should that tree or shrub be removed, die, or become seriously damaged or diseased.
- 4.2.18 Requirement 14: **Public rights of way diversions** – No phase of the Authorised Development may be commenced and no decommissioning may be undertaken until a public rights of way management plan for any phase of the Authorised Development that requires public footpath to be temporarily closed within that phase, has been submitted to and approved by the Relevant Planning Authority. The plan must include measures to minimize the distance of the sections of public rights of way to be closed and details of the publicity and signage to be provided. The plan must be implemented as approved unless otherwise agreed with the Relevant Planning Authority in consultation with the highway authority.
- 4.2.19 Requirement 15: **Construction hours** – Construction works will not take place outside the hours specified hours of 8.00-18.00 hours Monday to Friday and 8.00-13.00 hours on Saturday unless they are emergency works or works that are not audible at the boundary of the Order Limits. There will be no activity on Sundays or bank holidays.
- 4.2.20 Requirement 16: **Fencing and other means of enclosure** - The undertaker is required to obtain the written approval from the Relevant Planning Authority (or authorities, as applicable) for any proposed permanent and temporary fences, walls, or other means of enclosure, for each phase prior to commencement of the phase in question of the authorised development. For the purpose of this requirement, “commence” includes any site preparation works which are defined in the DCO. Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development. Any temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used. Any approved permanent fencing must be completed before completion of the authorised development.
- 4.2.21 Requirement 17: **Archaeology** - This requirement stipulates that phase of the authorised development may commence until a written scheme of investigation of areas of archaeological interest within that phase has been submitted to and approved



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by the Relevant Planning Authority. Any archaeological works or programme of archaeological investigation carried out under the approved scheme for investigation must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute. Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

4.2.22 Requirement 18: **Requirement for written approval** - This requirement provides that where any approval, agreement or confirmation of the Secretary of State, local planning authority or another person is required under these requirements, then such approval, agreement or confirmation must be provided in writing.

4.2.23 Requirement 19: **Amendments to approved details** - This requirement allows details which have been submitted and approved by the Relevant Planning Authority to be amended/varied in writing by the Relevant Planning Authority. The amendment or variation must always be in accordance with the principles and assessment undertaken in the ES and must not give rise to any materially new or different environmental effects from those assessed in the original ES.

4.2.24 Requirement 20: **Consultation** – Under this requirement, 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**

4.2.25 This section provides a bespoke procedure for dealing with an application made to the Relevant Planning Authority for any consent, agreement or approval required by the Order. It sets out time periods within which decisions must be made and provides for deemed approval of the applications in certain circumstances. The Schedule makes provision for appeals to be made in the event of a refusal of an application or if the Relevant Planning Authority requires further information to be provided in relation to that application. The bespoke process is required in order to ensure that applications under Requirements are dealt with efficiently so that the authorised development is not held up. Deemed consent of applications is required for the same reason and ensures that the nationally-needed authorised development will not be held up by the discharge of requirements.

### **4.3 Schedule 3 (Streets subject to street works)**

4.3.1 This Schedule sets out the streets that are to be subject to street works. The Schedule relates to Article 9 (Street works).

### **4.4 Schedule 4 (Alteration of streets)**

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4.4.1 This Schedule lists the streets which will be permanently altered pursuant to the power contained in Article 11 (power to alter layout, etc. of streets). The table includes those streets maintained by the highway authority.

#### **4.5 Schedule 5 (Public rights of way to be stopped up)**

4.5.1 This Schedule lists the rights of way which will be stopped up during construction or maintenance. The Schedule relates to Article 13 (Temporary stopping up of public rights of way) and Article 14 (Public rights of way). Part 1 sets out those public rights of way being temporarily stopped up and Part 2 sets out those public rights of way being permanently stopped up.

#### **4.6 Schedule 6 (Access to works)**

4.6.1 This Schedule lists those areas where the undertaker has the power pursuant to Article 15 to form and lay out permanent and temporary means of access.

#### **4.7 Schedule 7 (Hedgerows)**

4.7.1 This schedule sets out the lengths of hedgerows and trees which may be interfered with or removed under the Order. The Schedule relates to Article 39 (Felling or lopping of trees or removal of hedgerows).

#### **4.8 Schedule 8 (Land in which only new rights etc. may be acquired)**

4.8.1 This Schedule sets out the areas of land over which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate the land plans, column (2) with the relevant work numbers and (3) explains the purposes for which rights over land may be acquired. The Schedule relates to Article 23 (Compulsory acquisition of rights).

#### **4.9 Schedule 9 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)**

4.9.1 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016. The Schedule relates to Article 23 (Compulsory acquisition of rights).

#### **4.10 Schedule 10 (land of which temporary possession may be taken)**

4.10.1 This Schedule sets out the areas of land over which the undertaker may only temporarily possess. The plot numbers in column (1) of that table correlates with the land plan, the purpose for which possession may be taken is set out in column (2) the

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nature of the rights in column (2); and (3) explains the relevant part of the authorised development. The Schedule relates to Article 30 (temporary use of land for carrying out the authorised development).

#### **4.11 Schedule 11 (Protective provisions)**

4.11.1 This Schedule sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised development. This schedule relates to Article 45 (protective provisions) and currently contains protective provisions for the benefit of defined classes of service undertakers (electricity, gas, water and sewerage undertakers at Part 1, electronic communications code operators at Part 2). Part 3 contain protective provisions for lead local flood authorities.

#### **4.12 Schedule 12 (Arbitration rules)**

4.12.1 This Schedule relates to Article 41 (Arbitration). The intention is to achieve a fair, impartial, and binding award on substantive differences between the parties. Further, the objective is to achieve determination within 4 months from the date the arbitrator is first appointed to ensure that any disputes are resolved quickly. In the context of the pressing need for new power generation, particularly by renewable means, identified in the National Policy Statements, it is considered desirable that any disputes are resolved promptly to enable delivery of the authorised development in as timely a way as possible.

4.12.2 Schedule 12 refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent.

4.12.3 The timetable for the process is as follows:

4.12.3.1 Within 14 days of the Arbitrator being appointed the Claimant shall serve on the Respondent and the Arbitrator a statement of claim and all supporting evidence to support the claim.

4.12.3.2 Within 14 days of receipt of the Claimant's statement of claim and supporting evidence the Respondent will serve a statement of defence and all supporting evidence to support its defence, together with any objections to the Claimant's documentation.

4.12.3.3 Within 7 days of receipt of the Respondent's documentation the Claimant may make a statement of reply.

4.12.4 The parties would be liable for their own costs of the arbitration, unless otherwise directed by an award made by the arbitrator. Costs will include the arbitrator's costs together with the reasonable legal fees and other costs incurred by the other party.

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**4.13 Schedule 13 (Documents to be certified)**

4.13.1 This Schedule lists those documents referred to in the DCO as requiring certification by the Secretary of State.