



**HELIOS** RENEWABLE  
ENERGY  
PROJECT

**PINS Document Number:**  
EN010140/APP/3.2

**Pursuant to:**  
APFP Regulation 5(2)(c)

## **Explanatory Memorandum**

June 2024

**THE HELIOS RENEWABLE ENERGY  
PROJECT ORDER 202[•]**

**EXPLANATORY MEMORANDUM**

## CONTENTS

<b>Clause</b>	<b>Heading</b>	<b>Page</b>
1.	GLOSSARY .....	1
2.	INTRODUCTION .....	3
3.	THE DRAFT ORDER.....	5
4.	ARTICLES.....	5
5.	SCHEDULES .....	23

## 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>“Access and rights of way plans”</b>	the plans which accompany the Application showing the extent of temporary stopping up and access works present within the Order Limits;
<b>“APFP Regulations”</b>	the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, which set out detailed requirements for submitting and publicising applications for NSIPs;
<b>“Applicant”</b>	Enso Green Holdings D Limited (company number 12762856), whose registered office is at Ropemaker Place, 28 Ropemaker Street, London, EC2Y 9HD;
<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 sections 14(1)(a) and 15 of the 2008 Act by virtue of it being a generating station in England with a capacity of more than 50 MW;
<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, 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>	an Environmental Impact Assessment assessing 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, which set 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>“kV”</b>	kilovolt;
<b>“Land Plans”</b>	the plans which accompany the Application showing the Order Land;
<b>“model provisions”</b>	the model provisions for DCOs set out in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009;
<b>“MW”</b>	megawatts;
<b>“NSIP”</b>	a Nationally Significant Infrastructure Project that must be authorised by the making of a DCO under the 2008 Act;
<b>“Other Consents and Licences”</b>	the Other Consents and Licences document which accompanies the Application, explaining the Applicant’s approach to obtaining all other necessary consents to deliver the authorised development beyond the Order;
<b>“Order”</b>	the Helios Renewable Energy Project Order 202[•], 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;
<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 Land Plans;
<b>“Planning Authority”</b>	North Yorkshire Council, as planning authority for the administrative area within which the Order Limits are situated;
<b>“PV”</b>	photovoltaic;
<b>“Site”</b>	the site located in the administrative area of North Yorkshire Council within which the authorised development is located;

<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>“undertaker”</b>	the Applicant or such other person who takes the benefit of the Order in accordance with the provisions of article 6 of the draft Order;
<b>“Works Plans”</b>	the plans which accompany the Application showing the Order Limits and the numbered works that form the authorised development as described in Schedule 1 to the Order.

## **2. INTRODUCTION**

### **2.1 Overview**

- 2.1.1 This Explanatory Memorandum has been prepared on behalf of the Applicant. It forms part of the Application.
- 2.1.2 The Applicant is seeking development consent for the authorised development, which in summary comprises the construction, operation, maintenance and decommissioning of a solar PV generating station with a total capacity exceeding 50 MW, together with other associated and ancillary development. A detailed description of the authorised development is included in Chapter 3 of the Environmental Statement.
- 2.1.3 The authorised development is situated on land to the south-west of the village of Camblesforth and to the north of the village of Hirst Courtney in North Yorkshire, and is located within the administrative boundary of North Yorkshire Council.
- 2.1.4 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 in excess of 50 MW, this being a ground-mounted solar PV generating station.
- 2.1.5 The DCO, if made, would be known as the Helios Renewable Energy Project Order 202[•]. A draft of the DCO has been submitted with the Application.
- 2.1.6 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and each schedule to, the Order, as required by Regulation 5(2)(c) of the APFP Regulations. It should be read in conjunction with the suite of documents accompanying the Application, in particular the draft Order, the Environmental Statement, the Works Plans, the Land Plans, the Consultation Report, the Planning Statement and the Statement of Reasons.

### **2.2 Site**

- 2.2.1 The Site comprises 474.65 hectares of land situated within the administrative boundary of North Yorkshire Council.
- 2.2.2 The Order Limits are the areas within which the authorised development may be carried out. The Order Limits are shown on the Land Plans and Works Plans. The powers in the Order enabling the acquisition of new rights over land and the

imposition of restrictions over land relate to the Order Land only, which is all the land within the Order Limits.

- 2.2.3 Further information regarding the Site is provided in Chapter 3 of the Environmental Statement.

## 2.3 Authorised development

- 2.3.1 A detailed description of the authorised development can be found in Chapter 3 of the Environmental Statement. It comprises a generating station with a capacity of more than 50 MW, being the NSIP, and is described in Schedule 1 to the Order.
- 2.3.2 The description of the NSIP at Work No. 1 does not include an upper limit on the capacity of the generating station that development consent is being sought for. The Applicant does not consider the imposition of such an upper limit to be necessary. As explained below at Section 2.5 and more fully set out in the Environmental Statement, the EIA for the authorised development has been undertaken using design parameters that represent the worst-case scenario for the authorised development. These parameters will constrain the extent of the authorised development and are adequately secured within the draft Order. There is precedent for this approach in the Cleve Hill Solar Park Order 2020 and the Longfield Solar Farm Order 2023.

## 2.4 Associated development

- 2.4.1 The draft Order specifically authorises development which is associated with the NSIP at Work No. 1. The Secretary of State may, under the provisions of section 115 of the 2008 Act, grant development consent for development that is associated with the NSIP (“**associated development**”).
- 2.4.2 Guidance on associated development has been issued by the Secretary of State.<sup>1</sup> This guidance provides that associated development will “*be 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 to address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development*” (paragraph 5).
- 2.4.3 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.

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<sup>1</sup> Department for Communities and Local Government, ‘[Planning Act 2008: Guidance on associated development applications for major infrastructure projects](#)’ (April 2013), para

- 2.4.4 The associated development for the purposes of section 115 of the 2008 Act comprises a battery energy storage system (Work Nos. 2 in Schedule 1 to the Order).
- 2.4.5 The authorised development also includes provision for associated development comprising such other works within the Order Limits as may be necessary or expedient for the purpose of or in connection with the authorised development and which fall within the scope of work assessed by the Environmental Statement.

## **2.5 Parameters in the draft Order**

- 2.5.1 The design parameters for the authorised development are specified and assessed in the Environmental Statement. The Environmental Statement captures the important parameters necessary to ensure that the authorised development does not exceed the worst-case scenario assessed in the Environmental Statement.
- 2.5.2 The detailed design of the authorised development shall be in accordance with the parameters set out in the Environmental Statement as secured by a requirement within the draft Order. This approach is intended to provide flexibility in the design of the authorised development, whilst ensuring compliance with the parameters set out in the Environmental Statement.

## **3. THE DRAFT ORDER**

### **3.1 Overview**

- 3.1.1 The purpose and effect of the provisions of the draft Order are now explained in sequence. The Order consists of 46 operative provisions, known as articles, and 13 Schedules. These are considered below in numerical order.
- 3.1.2 Whilst the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 has been repealed, the draft Order is based on the model provisions as well as other DCOs that have been made to date. The draft Order has been influenced by the following recent DCOs: Longfield Solar Farm Order 2023, the Hornsea Four Offshore Wind Farm 2023, the Awel y Môr Offshore Wind Farm Order 2023, the A417 Missing Link Development Consent Order 2022, the Little Crow Solar Park Order 2022, and the Cleve Hill Solar Park Order 2020.

## **4. ARTICLES**

### **4.1 Part 1 (Preliminary)**

#### *Article 1 (Citation and commencement)*

- 4.1.1 This article 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 DCOs.



*Article 2 (Interpretation)*

- 4.1.2 This article provides for the interpretation of the provisions for the Order, including the Schedules.<sup>2</sup> It is a standard article which was included in the model provisions as article 1.
- 4.1.3 This article makes alterations to the model provisions to accommodate departures from model provisions elsewhere in the Order, and to add required definitions, including:
- (a) 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 11 to the Order.
  - (b) 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 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 to the Order. The Applicant considers that this drafting is more effective, and in line with established practice.
  - (c) 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.
  - (d) A definition of “maintain” has been added to make clear what activities are authorised under article 4 of the Order 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.

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<sup>2</sup> Where appropriate, some Schedules to the draft Order also contain provisions setting out the meanings of terms within that particular Schedule.

(e) 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 as described in the Book of Reference.

(f) 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.

4.1.4 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.

## **4.2 Part 2 (Principal Powers)**

### *Article 3 (Development consent etc. granted by the Order)*

4.2.1 This article grants development consent for the authorised development, subject to the provisions of the Order (including the requirements at Schedule 2 to the Order). Schedule 1 to the Order describes the authorised development.

4.2.2 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 this Order uses the term authorised development as explained at 4.1.3 above.

4.2.3 Article 3(2) was not included in the model provisions but has been included in previous DCOs. For example, this article is as found in article 3(2) of the Longfield Solar Farm Order 2023. It provides that each numbered work must be situated within the corresponding numbered area shown on the Works Plans and within the limits of deviation shown thereon.

### *Article 4 (Maintenance of the authorised development)*

4.2.4 This article sets out the scope within which the undertaker may maintain the authorised development and is required so that the undertaker has the power to maintain the authorised development. These powers of maintenance are subject to the other provisions of the Order and any agreements made under the Order.

4.2.5 Article 4 was included in the model provisions as article 3, and an example of its use can be found in article 6 of the A417 Missing Link Development Consent Order 2022.

*Article 5 (Operation of generating station)*

- 4.2.6 This article permits the operation and use of the generation station comprised in the authorised development, and is included pursuant to section 140 of the 2008 Act. It is included so that the undertaker has powers to operate the generating station.
- 4.2.7 The drafting of article 5 is in keeping with the approach taken in recently made energy DCOs. For example, this article is as found in article 11 of the Little Crow Solar Park Order 2022, and article 4 of the Longfield Solar Farm Order 2023.
- 4.2.8 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. This would include, for instance, the requirement for the undertaker to obtain a generation licence in terms of the Electricity Act 1989.

*Article 6 (Benefit of the order)*

- 4.2.9 This article makes provision for the transfer of any or all of the benefit of the Order. It 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 this article. This article is in a substantially similar form to the provisions found in article 6 of the Awely Môr Offshore Wind Farm Order 2023
- 4.2.10 Under paragraph (4) of this article, the consent of the Secretary of State is required before the undertaker may transfer or lease the benefits of the Order except where:
- (a) the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989;
  - (b) the transferee or lessee is a holding company or subsidiary of the undertaker;
  - (c) 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
  - (d) the transfer or grant is made to Northern Powergrid (Yorkshire) plc or National Grid Electricity Transmission plc.
- 4.2.11 Article 6(3) has been amended from the model provisions so that it refers to “transfer or grant”, which is considered to be more precise than “agreement”.
- 4.2.12 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. Paragraph (5) of this article 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. Paragraphs (6) to (8) provide further detail on the notification that is to be given.

4.2.13 Article 6(9) provides that, where the undertaker has transferred or granted the benefit of the Order:

- (a) the benefit transferred or granted will include any rights that are conferred and any obligations that are imposed;
- (b) the transferred benefit will reside exclusively with the transferee or lessee, and shall not be enforceable against the undertaker; and
- (c) the benefits or rights conferred will be subject to the same restrictions, liabilities and obligations as would apply to their exercise by the undertaker.

*Article 7 (Planning permission)*

4.2.14 This article permits certain development authorised by planning permission under the Town and Country Planning Act 1990 that is within the Order Limits to be carried out pursuant to the terms of the planning permission without breaching the terms of the Order. This is not a model provision, but it ensures that the undertaker does not breach section 161 of the 2008 Act in carrying out certain development pursuant to a grant of planning permission, provided that the development is not of itself an NSIP, or is required to complete or enable the use or operation of any part of the authorised development.

4.2.15 This is in keeping with the approach taken in recently made DCOs. For example, this article is as found in article 8 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

*Article 8 (Disapplication and modification of legislative provisions)*

4.2.16 This article disapplies a number of statutory provisions. Section 120(5) of the 2008 provides that a DCO may apply, subject to the terms of the 2008 Act, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order. It is common for DCOs to contain such provisions, although their scope and content invariably differs depending on the circumstances of that particular NSIP. Article 8 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 7 of the Awel y Môr Offshore Wind Farm Order 2023 and article 3 of the A417 Missing Link Development Consent Order 2022.

4.2.17 This article provides for the disapplication of:

- (a) section 23 of the Land Drainage Act 1991, which prohibits obstructions and other works in watercourses without the consent of the relevant drainage authority;
- (b) the provisions of any byelaws made by an internal drainage board under section 66 of the Land Drainage Act 1991;
- (c) regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016 in relation to the carrying on of a flood risk activity; and

- (d) the provisions of the Neighbourhood Planning Act 2017 insofar as these relate to the temporary possession of land.

4.2.18 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 (i) the Land Drainage Act 1991 through protective provisions for the protection of the relevant drainage authorities (Part 3 of Schedule 9 to the Order), and (ii) the Environmental Permitting (England and Wales) Regulations 2016 through protective provisions for the protection of the Environment Agency (Part 4 of Schedule 9 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.

4.2.19 Under Section 150 of the 2008 Act, a provision in a DCO to remove the requirement for a prescribed consent or authorisation may only be granted if the body which would otherwise be required to grant the prescribed consent or authorisation has consented to this. The relevant consents, where applicable, will be 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.

*Article 9 (Defence to proceedings in respect of statutory nuisance)*

4.2.20 This article provides that statutory nuisance proceedings may not be brought under the Environmental Protection Act 1990 in respect of noise, if the noise is (i) created in the course of carrying out construction or maintenance of the authorised development and for which either notice has been given under section 60 of the Control of Pollution Act 1974 or consent has been obtained under section 61 of that Act, or (ii) a consequence of the construction, maintenance or decommissioning of the authorised development which cannot reasonably be avoided.

4.2.21 Article 9 is a model provision, in recognition of the fact that such noise is likely to 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 this article in the Order.

4.2.22 The scope of this article varies across 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, and article 8 of the Awel y Môr Offshore Wind Farm Order 2023.

### **4.3 Part 3 (Streets)**

*Article 10 (Street works)*

4.3.1 This article 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 of the Order 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 the 1991 Act. Certain provisions of the 1991 Act apply to works

carried out under this article, subject to the provisions of article 12 (application of the 1991 Act).

- 4.3.2 Article 10 is based on article 8 of the model provisions, and is in a substantially similar form to the provisions 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 2023.

*Article 11 (Power to alter layout, etc. of streets)*

- 4.3.3 This article allows the undertaker to alter the layout of, or carry out any works in, a street. Schedule 4 to the Order sets out the permanent and temporary 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 whilst ensuring that there is minimal disruption to the local highway network.
- 4.3.4 Article 11 is in a substantially similar form to the provisions found in article 9 of the Longfield Solar Farm Order 2023.

*Article 12 (Application of the 1991 Act)*

- 4.3.5 This article provides for the application of the 1991 Act. Although not included in the model provisions, it is in a substantially similar form to the provisions found in article 10 of the Awel y Môr Offshore Wind Farm Order 2023 and article 12 of the A417 Missing Link Development Consent Order 2022.
- 4.3.6 Paragraph (4) of this article provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions, which are intended primarily to regulate the carrying out of street works by utility companies in respect of their apparatus, is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order and the provisions in the Order which regulate the carrying out of the authorised development.

*Article 13 (Construction and maintenance of altered streets)*

- 4.3.7 This article provides that the permanent alterations to the streets listed in Part 1 of Schedule 4 to the Order 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. The temporary alterations to the streets listed at Part 2 of Schedule 4 to the Order must be completed to the reasonable satisfaction of the street authority, and maintained at the undertaker's expense for the duration that they are used for the purposes of construction or decommissioning of the authorised development.
- 4.3.8 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.
- 4.3.9 Paragraphs (4) and (5) of this article 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.

- 4.3.10 Paragraph (6) provides that, with the exception of those provisions dealing with permanent alterations listed above, the terms of this article do not apply where the undertaker is the street authority for a street in which the works are being carried out.
- 4.3.11 Article 13 is in a substantially similar form to the provisions found in article 10 of the Longfield Solar Farm Order 2023 and article 13 of the A417 Missing Link Development Consent Order 2022.

*Article 14 (Temporary stopping up and permitting vehicular use on public rights of way)*

- 4.3.12 This article provides for the temporary stopping up and alteration or diversion of public rights of way within the Order Limits, including those listed in Schedule 5 to the Order. 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.
- 4.3.13 It also authorises the undertaker to use motor vehicles on classes of public rights of way where there would not otherwise be a public right to use motor vehicles. This is necessary to enable the undertaker to access parts of the authorised development with plant and equipment which may otherwise be severed by public rights of way.
- 4.3.14 Paragraph (3) of this article requires the undertaker to provide reasonable access for pedestrians going to or from premises abutting a public right of way affected by any temporary stopping up, alteration or diversion of a public right of way, if there would otherwise be no such access.
- 4.3.15 Paragraph (6) provides that compensation is payable in respect of loss suffered by the suspension of any private rights of way. This ensures that persons who temporarily lose private rights of way because of the suspension of public rights of way can be appropriately compensated.
- 4.3.16 Article 14 is in a substantially similar form to the provisions found in article 11 of the Longfield Solar Farm Order 2023.

*Article 15 (Access to works)*

- 4.3.17 This article 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.
- 4.3.18 The article also provides that other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the Planning Authority, in consultation with the highway authority. In addition, the undertaker is required to restore any access that has been temporarily created to the reasonable satisfaction of the street authority.
- 4.3.19 Article 15 is in a substantially similar form to the provisions found in article 12 of the Longfield Solar Farm Order 2023.

*Article 16 (Agreements with street authorities)*

- 4.3.20 This article 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 10 (street works), 11 (power to alter layout, etc of streets) and 13 (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.
- 4.3.21 Article 16 is in a substantially similar form to the provisions found in article 13 of the Longfield Solar Farm Order 2023.

*Article 17 (Traffic regulations)*

- 4.3.22 This article includes a general power that would authorise the undertaker to make temporary traffic regulation measures for the purposes of the construction or decommissioning of the authorised development. The inclusion of this power is required to provide a degree of flexibility to respond to changing conditions on the road network over the lifetime of the authorised development. The general power conferred by this article is appropriately regulated as it may only be exercised with the consent of the traffic authority.
- 4.3.23 Article 17 is not a model provision, but it is common in DCOs where it is necessary in the interests of public safety during construction of the development for the undertaker to put in place some temporary restrictions on road usage. It is as found in article 14 of the Longfield Solar Farm Order 2023, and in a substantially similar form to the provisions found in article 14 of the A417 Missing Link Development Consent Order 2022.

**4.4 Part 4 (Supplemental Powers)**

*Article 18 (Discharge of water)*

- 4.4.1 This article 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 to section 85 of the Water Resources Act 1991 from the model provisions has been deleted (as this section has now been repealed), and replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016.
- 4.4.2 Article 18 is in a substantially similar form to the provisions found in article 9 of the Little Crow Solar Park Order 2022 and article 14 of the Awel y Môr Offshore Wind Farm Order 2023.

*Article 19 (Protective work to buildings)*

- 4.4.3 This article is a model provision which has been included in most made DCOs to date. It is required because there are buildings in close proximity to the Order



Limits that might feasibly require surveys and protective works as a result of the authorised development.

- 4.4.4 The purpose of this article is to provide powers for 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 Limits, subject to a number of conditions including the service of 14 days' notice (except in case of emergency) and the payment of compensation in the event that any loss or damage arises. Where the undertaker serves 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.
- 4.4.5 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 the vicinity of the building. This wording is a minor update from the wording used in the model provision, as the Applicant considered that the phrase "opened for use" which is used within those provisions is of limited applicability to the authorised development.
- 4.4.6 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.
- 4.4.7 Article 19 is as found in article 16 of the Longfield Solar Farm Order 2023, and is also in a substantially similar form to the provisions found in article 16 of the Awely Môr Offshore Wind Farm Order 2023 and article 22 of the A417 Missing Link Development Consent Order 2022.

*Article 20 (Authority to survey and investigate land)*

- 4.4.8 This article 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.
- 4.4.9 The model provision has been modified so that no trial holes are to be made:
  - (a) in land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority.
- 4.4.10 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 considered to be standard practice following its

inclusion in various made DCOs. For example, article 20(6) is as found in article 23(6) of the A417 Missing Link Development Consent Order 2022.

- 4.4.11 This article applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused. This is considered necessary in order to ensure that there is no undue delay in the implementation of the authorised development.
- 4.4.12 Article 20 is in a substantially similar form to the provisions found in article 17 of the Longfield Solar Farm Order 2023, article 10 of the Little Crow Solar Park Order 2022 and article 15 of the Awel y Môr Offshore Wind Farm Order 2023.

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

### *Article 21 (Compulsory acquisition of land)*

- 4.5.1 This article is a model provision which 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. It is necessary to secure the delivery of the authorised development as set out in the Statement of Reasons accompanying the application.
- 4.5.2 Paragraph (2) makes clear that the powers in this article are subject to the powers and restrictions in article 23 (compulsory acquisition of rights) and article 30 (temporary use of land for carrying out 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.
- 4.5.3 Article 21 is as found in article 18 of the Awel y Môr Offshore Wind Farm Order 2023 and in article 18 of the Longfield Solar Farm Order 2023.

### *Article 22 (Time limit for exercise of authority to acquire land compulsorily)*

- 4.5.4 This article 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 many made DCOs.
- 4.5.5 Article 22 is as found in article 19 of the Longfield Solar Farm Order 2023, article 19 of the Awel y Môr Offshore Wind Farm Order 2023 and article 26 of the A417 Missing Link Development Consent Order 2022.

### *Article 23 (Compulsory acquisition of rights)*

- 4.5.6 This article 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.
- 4.5.7 It provides that, in respect of the Order Land set out in Schedule 7 to the Order, 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 7 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.

- 4.5.8 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.
- 4.5.9 Article 23 is in a substantially similar form to the provisions found in article 20 of the Longfield Solar Farm Order 2023 and article 20 of the Awel y Môr Offshore Wind Farm Order 2023.

*Article 24 (Private rights)*

- 4.5.10 This is a model provision which (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.
- 4.5.11 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.
- 4.5.12 Article 24 is in a substantially similar form to the provisions found in article 21 of the Longfield Solar Farm Order 2023 and article 22 of the Awel y Môr Offshore Wind Farm Order 2023.

*Article 25 (Application of the 1981 Act)*

- 4.5.13 This article 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 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.

4.5.14 The article has been amended from the model provisions to incorporate and reflect the changes introduced by the Housing and Planning Act 2016, an approach which has precedent in a number of made DCOs.

4.5.15 Article 25 is as found in article 22 of the Longfield Solar Farm Order 2023.

*Article 26 (Acquisition of subsoil only)*

4.5.16 This article is based on article 24 of the model provisions, and permits the undertaker to acquire, or create rights in, just the subsoil below land. This article is appropriate in the context of cables to be laid underground as part of the authorised development, as it enables the undertaker to minimise as far as possible the extent of interests to be acquired, thereby reducing the impact on landowners.

4.5.17 Article 26 is as found in article 23 of the Longfield Solar Farm Order 2023 and article 21 of the Cleve Hill Solar Park Order 2020.

*Article 27 (Power to override easements and other rights)*

4.5.18 This article provides that, in carrying out or using the authorised development 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 of any restriction as to the use of land arising by virtue of contract. It also provides that compensation may be payable under sections 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.

4.5.19 Article 27 is as found in article 24 of the Longfield Solar Farm Order 2023.

*Article 28 (Modification of Part 1 of the Compulsory Purchase Act 1965)*

4.5.20 This article 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.

4.5.21 Article 28 is in a substantially similar form to the provisions found in article 25 of the Longfield Solar Farm Order 2023 and article 25 of the Awel y Môr Offshore Wind Farm Order 2023.

*Article 29 (Rights under or over streets)*

4.5.22 This article is a model provision which has been included in many made DCOs to enable the undertaker to enter onto, appropriate and use interests within streets where required for the purposes of the authorised development, without being required to acquire that land. As such, this provision is required in order to

reduce the amount of land that needs to be compulsorily acquired for the purposes of the authorised development.

- 4.5.23 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. Paragraph (3) prohibits the exercise of this power without acquisition in respect of some structures, whilst paragraphs (4) and (5) make provision for the payment of compensation in certain circumstances.
- 4.5.24 Article 29 is as found in article 26 of the Longfield Solar Farm Order 2023, article 26 of the Awel y Môr Offshore Wind Farm Order 2023 and article 33 of the A417 Missing Link Development Consent Order 2022.

*Article 30 (Temporary use of land for carrying out the authorised development)*

- 4.5.25 This article 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.
- 4.5.26 New wording has been added to paragraphs (4) and (5) to take into account that the undertaker may, pursuant to article 30(1)(a), 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 Compulsory Purchase Act 1965 or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.
- 4.5.27 Article 30 is in a substantially similar form to article 27 of the Longfield Solar Farm Order 2023.

*Article 31 (Temporary use of land for maintaining authorised development)*

- 4.5.28 This article 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. The article is broadly based on the model provisions, and provides for the payment of compensation for that temporary use of land.
- 4.5.29 The maintenance period set out in this article has been adapted from the model provisions to apply to the period of 5 years beginning with the date of first export of electricity as opposed to the date on which the project is opened for use, as this is more appropriate given the form of the authorised development.

4.5.30 Article 31 is in a substantially similar form to the provisions found in article 28 of the Longfield Solar Farm Order 2023 and article 28 of the Awel y Môr Offshore Wind Farm Order 2023.

*Article 32 (Statutory undertakers)*

4.5.31 This article provides for the acquisition of rights and imposition of restrictive covenants over 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 provided for at article 45 (protective provisions) and set out in Schedule 9 to the Order.

4.5.32 Article 32 is in a substantially similar form to the provisions found in article 29 of the Longfield Solar Farm Order 2023 and article 29 of the Awel y Môr Offshore Wind Farm Order 2023.

*Article 33 (Apparatus and rights of statutory undertakers in stopped up streets)*

4.5.33 This article governs what happens to statutory undertakers' apparatus (pipes, cables, etc.) under streets that are temporarily stopped up in accordance with the provisions of the Order. It is required because, without it, the relevant statutory undertaker would not have access to the apparatus, since there would no longer be a right of way along the street.

4.5.34 The article is a model provision, but has been amended in that paragraph (2) of the model provisions onwards has been deleted to avoid duplication with the protective provisions contained in Schedule 9 to the Order.

4.5.35 Article 33 is as found in article 30 of the Longfield Solar Farm Order 2023.

*Article 34 (Recovery of costs of new connections)*

4.5.36 This article provides that persons who have to create a new connection following the exercise of powers under article 33 (apparatus and rights of statutory undertakers in stopped up streets) may recover the costs of new connections from the undertaker. It is a model provision, with the part of this which referred to the permanent stopping up of streets deleted as this is not relevant in the context of the authorised development.

4.5.37 Article 34 is as found in article 31 of the Longfield Solar Farm Order 2023 and article 30 of the Awel y Môr Offshore Wind Farm Order 2023.

*Article 35 (Compulsory acquisition of land – incorporation of minerals code)*

4.5.38 This article incorporates Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 to any land acquired by the undertaker that may contain mines and minerals. The effect of this provision is that the undertaker is prevented from acquiring the rights to any mines and minerals underneath acquired land, unless expressly purchased, and provides mine owners with the ability to work the mines and extract minerals, subject to certain restrictions.

4.5.39 Article 35 is a model provision, and is as found in article 44 of the Longfield Solar Farm Order 2023.

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

#### *Article 36 (Removal of human remains)*

- 4.6.1 This article 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. It is based upon article 17 of the model provisions, and is required to ensure that the discovery of archaeological remains are recovered appropriately without causing undue delay to the implementation of the authorised development.
- 4.6.2 The article departs from the model provisions in that 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.
- 4.6.3 Taken together, the effect of this article is to replace the existing and disparate for regulating the removal of human remains and consolidate the applicable provisions into a single article in the Order.
- 4.6.4 Article 36 is as found in article 12 of the Little Crow Solar Park Order 2022.

#### *Article 37 (Operational land for the purposes of the 1990 Act)*

- 4.6.5 This article is a model provision which is included in a number of made DCOs, and has the effect of ensuring that land on which the authorised development is constructed is “operational land” for the purposes of 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.
- 4.6.6 Article 37 is as found in article 35 of the Longfield Solar Farm Order 2023 and article 13 of the Little Crow Solar Park Order 2022.

#### *Article 38 (Certification of plans, etc.)*

- 4.6.7 This article 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 true copies. It provides certainty as to which documents will be certified by the Secretary of State in relation to the Order.

#### *Article 39 (Service of notices)*

- 4.6.8 This article governs how any notices that may be served under the provisions of the Order will be deemed to have been served properly. In particular, it allows for service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. This provision is necessary because the notice provisions in 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 made DCOs.
- 4.6.9 Article 39 is as found in article 15 of the Little Crow Solar Park Order 2022 and article 41 of the Awel y Môr Offshore Wind Farm Order 2023.

#### *Article 40 (Felling or lopping of trees or removal of hedgerows)*

- 4.6.10 This article is based on a model provision and 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, 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. The provisions of this article are required for safety reasons, and their applicability is appropriately limited.
- 4.6.11 Paragraphs (2) and (3) set out provisions relating to compensation, which are identical to the model provisions. Compensation is provided if loss or damage is caused in carrying out the activities listed above.
- 4.6.12 Paragraph (4) has been inserted in addition to the model provisions to provide an additional power for the undertaker to remove hedgerows or part of them within the Order Limits that may be required for the purposes of the authorised development or in connection with the authorised development. The Applicant considers that this power, which exists to afford flexibility to the undertaker during the detailed design phase, will be sufficiently constrained by the provisions of the landscape and ecological management plan, secured by requirement 10 of the Order and to be approved by the Planning Authority and implemented as approved by the undertaker.
- 4.6.13 Paragraph (5) modifies Regulation 6 of the Hedgerows Regulations 1997. This is so that removal of any hedgerow to which the 1997 Regulations apply is permitted for carrying out development which has been authorised by the Order. The 1997 Regulations allow a local planning authority to object to and prohibit interference with a hedgerow. The normal exception to this is for development permitted by a DCO and therefore this modification is necessary to extend the exception to development authorised by the 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.

*Article 41 (Trees subject to tree preservation orders)*

- 4.6.14 This article provides that the undertaker may fell or lop or cut back the roots of any tree which is subject to a Tree Preservation Order (“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. The article is a model provision included in a number of made DCOs, save that it applies generally to any tree subject to a TPO either within or overhanging the Order Limits.
- 4.6.15 The Applicant is not aware of any TPO within the Order Limits but this power is necessary should any future TPO be granted within the Order Limits.
- 4.6.16 Article 41 is in a substantially similar form to the provisions found in article 37 of the Longfield Solar Farm Order 2023.

*Article 42 (Arbitration)*

- 4.6.17 This article is an arbitration provision, and is a departure from the model provisions. It 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 Applicant considers that this approach will provide greater certainty to all parties involved in the process, and is preferable to the approach adopted in the model provisions.

4.6.18 The article provides that 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. It also applies Schedule 10 to the Order, which sets out further detail of the arbitration process.

4.6.19 Paragraph (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.

4.6.20 Article 42, and the associated arbitration rules set out at Schedule 10, are as found in article 39 of the Longfield Solar Farm Order 2023 and article 18 of the Little Crow Solar Park Order 2022.

*Article 43 (Requirements, appeals etc.)*

4.6.21 This article gives effect to the provisions of Part 2 of Schedule 2 to the Order, which provides a formal process for discharging the requirements of the Order, including providing the undertaker with a right of appeal to the Secretary of State.

4.6.22 Article 43 is in a substantially similar form to the provisions found in article 18 of the Little Crow Solar Park Order 2022.

*Article 44 (Application of landlord and tenant law)*

4.6.23 This article is a model provision which is included in a number of made DCOs, and 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. It is required to ensure that landlord and tenant law does not impede the construction, operation or maintenance of the authorised development.

4.6.24 Article 44 is as found in article 34 of the Longfield Solar Farm Order 2023, article 19 of the Little Crow Solar Park Order 2022 and article 30 of the Cleve Hill Solar Park Order 2020.

*Article 45 (Protective provisions)*

4.6.25 This article is a model provision. It provides for Schedule 9 to the Order, which protects the interests of certain statutory undertakers, to have effect.

*Article 46 (Funding)*

4.6.26 This article provides that the undertaker may not exercise a number of powers prior to it putting in place a guarantee or security equal to its potential liability to compensation payable under the DCO, with this to be approved by the Secretary of State.

4.6.27 Article 46 is as found in article 43 of the Longfield Solar Farm Order 2023.

## 5. SCHEDULES

### 5.1 Schedule 1 (Authorised development)

5.1.1 This Schedule describes the authorised development, which is summarised above at Sections 2.3 and 2.4. A detailed description of the authorised development is included in Chapter 3 of the Environmental Statement.

5.1.2 The Schedule is split into different work numbers. Each of these work numbers represents a different part of the authorised development. The 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.

### 5.2 Schedule 2 (Requirements)

#### *Part 1: Requirements*

5.2.1 This Schedule sets out the requirements that will apply to the construction, operation, maintenance and decommissioning of the authorised development under the Order. The requirements generally follow the model provisions where relevant, and where they have been amended this has been informed by the outcomes of the EIA and discussions with the Planning Authority or other relevant statutory consultees. The requirements serve a similar purpose to planning conditions.

5.2.2 The requirements closely relate to the mitigation measures set out in the Environmental Statement and a number of them specifically refer to the Environmental Statement and other Application documents (in particular, 'outline' strategies or plans) in order to ensure that the mitigation or other measures outlined in those documents are secured.

5.2.3 Many of the requirements require submission of details for approval by the Planning Authority. In some instances, the Planning Authority is under a duty to consult with a third party or parties in relation to the document submitted to them for approval. This is a departure from the model provisions. Where consultation is required under the Order it is, in each case, the Planning Authority's duty to carry it out before approving a document for approval. Where it is considered that it would be particularly relevant for the Planning Authority to consult a specified third party, that third party has been named within the relevant requirement.

5.2.4 In all cases where there a scheme, 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.

5.2.5 Requirement 1: Time limits. This requirement is based on the model provisions and places a limit of 5 years for commencement of the authorised development, beginning on the date on which the Order comes into force.

5.2.6 Requirement 2: Phases of the authorised development and date of final commissioning. This requirement provides that the authorised development must not be carried out until a scheme setting out the phases of construction has been submitted to and approved by the Planning Authority. Notice of the date of final commissioning of each phase of Work No. 1 must be given to the Planning Authority within 15 working days of that date.

- 5.2.7 Requirement 3: Detailed design approval. This requirement sets out the details that must be submitted to and approved by the Planning Authority before each phase of the authorised development can commence. The details submitted must be in accordance with the location plan, the Works Plans, and the principles and assessments set out in the Environmental Statement. The authorised development must thereafter be carried out in accordance with the approved design details.
- 5.2.8 Requirement 4: Construction environmental management plans. This requirement provides that no phase of the authorised development may commence until a construction environmental management plan (CEMP) for that phase has been submitted to and approved by the Planning Authority. The CEMP must be in accordance with the outline CEMP submitted as part of the Application, and must provide details of community liaison measures, complaints procedures, nuisance management (including measures to avoid or minimise the impacts of construction works), a construction dust assessment, site waste and materials management measures, pollution control measures, security measures and use of artificial lighting, a contaminated land protocol, as well as details of out-of-hours working procedures. The works in that phase of the authorised development must thereafter be carried out in accordance with the approved CEMP.
- 5.2.9 Requirement 5: Decommissioning and restoration. This requirement provides that decommissioning works must commence no later than 40 years following the last date of final commissioning for Work No. 1. No decommissioning works for any phase of the authorised development may commence until a decommissioning environmental management plan (DEMP) and a decommissioning traffic management plan (DTMP) for that phase have been submitted to and approved by the Planning Authority. The DEMP and DTMP must be substantially in accordance with the outline DEMP submitted as part of the Application, and must include a resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials. The DEMP and DTMP must thereafter be implemented as approved.
- 5.2.10 Requirement 6: Construction traffic management plan. This requirement provides that no phase of the authorised development may commence until a construction traffic management plan (CTMP) for that phase has been submitted to and approved by the Planning Authority, in consultation with the highway authority for the highways to which the CTMP for that phase relates. The CTMP must be in accordance with the outline CTMP submitted as part of the Application, and must be implemented as approved.
- 5.2.11 Requirement 7: Operational environmental management plan. This requirement provides that no phase of the authorised development may commence until an operational environmental management plan (OEMP) for that phase has been submitted and approved by the Planning Authority. The OEMP must be in accordance with the outline OEMP submitted as part of the Application, and must include details of nuisance management measures to avoid or minimise the impacts of operational works, as well as details of associated traffic movements, including delivery vehicles and staff operation vehicle movements. The OEMP must thereafter be implemented as approved.
- 5.2.12 Requirement 8: Soil management. This requirement provides that 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 Planning Authority. The soil resource management plan must be substantially in accordance with the outline soil resource management plan submitted as part of the Application, and all construction works must be carried out in accordance with the approved soil resource management plan. Similar requirements apply in respect of the operation and decommissioning of the authorised development.

- 5.2.13 Requirement 9: Battery fire safety management plan. This requirement provides that, prior to the commencement of Work No. 2, a battery fire safety management plan must be submitted to and approved by the Planning Authority. The battery fire safety management plan must accord with the outline battery fire safety management plan submitted as part of the Application, or include such changes as the undertaker considered to be required. In the event that changes are proposed, the Planning Authority may not approve the battery fire safety management plan without first consulting with the Health and Safety Executive and North Yorkshire Fire and Rescue Service.
- 5.2.14 Requirement 10: Landscape and ecological management plan. This requirement provides that no phase of the authorised development may commence until a landscape and ecological management plan (LEMP) for that phase has been submitted to and approved by the Planning Authority. The LEMP must be in accordance with the outline LEMP submitted as part of the Application, and must include details of the method of protection of existing landscape features and habitats during the construction, operation and decommissioning of the authorised development, details of habitat creation, details of ongoing management and a timetable for landscape management during the lifetime of the authorised development, as well as landscaping details. The LEMP must thereafter be implemented as approved.
- 5.2.15 Requirement 11: Implementation and maintenance of landscaping. This requirement provides that all landscaping works must be carried out in accordance with the LEMP approved under Requirement 10 of the Order and with the relevant recommendations of any appropriate British Standards. It also sets out a replacement period of 5 years for any tree or shrub planted as part of an approved landscaping management scheme, should that tree or shrub die, become seriously damaged or diseased, or be removed.
- 5.2.16 Requirement 12: Public rights of way diversions. This requirement provides that no phase of the authorised development may commence, and no decommissioning to be undertaken, until a public rights of way management plan for any sections of public rights of way to be temporarily closed has been submitted to and approved by the Planning Authority, in consultation with the relevant highways authority. The public rights of way management plan must include details of measures to minimise the length of any sections of public rights of way to be temporarily closed, as well as advance publicity and signage. The public rights of way management plan must thereafter be implemented as approved.
- 5.2.17 Requirement 13: Construction hours. This requirement provides that no construction works are to take place except between the hours of 8am and 6pm Monday to Friday, and 8am to 1pm on Saturdays, with no activity on Sundays or bank holidays. Certain forms of work are permitted outside of these hours, including for instance emergency works, trenchless construction techniques

which cannot be interrupted, and works which do not cause noise that is audible at the boundary of the Order Limits.

- 5.2.18 Requirement 14: Fencing and other means of enclosure. This requirement provides that no phase of the authorised development may commence until details of all proposed permanent and temporary fences, walls or other means of enclosure have been submitted to and approved by the Planning Authority as part of the detailed design approval requirement by Requirement 3 of the Order. Any construction site must remain securely fenced in accordance with the approved details at all times during the construction of the authorised development. Any temporary fencing must be removed at completion of the construction of that phase, and any permanent fencing must be completed before completion of the authorised development.
- 5.2.19 Requirement 15: Archaeology. This requirement provides that no phase of the authorised development may commence until a written scheme of investigation (WSI) has for that phase has been submitted to and approved by the Planning Authority. The WSI must be substantially in accordance with the outline archaeological mitigation strategy submitted as part of the Application. Any archaeological works or programme of archaeological investigation must be carried out in accordance with the WSI, and undertaken by a member of (or organisation registered with) the Chartered Institute for Archaeologists.
- 5.2.20 Requirement 16: Requirement for written approval. This requirement provides that, where the approval, agreement or confirmation of the Secretary of State, the Planning Authority or another person is required under a requirement of the Order, that approval, agreement or confirmation must be given in writing.
- 5.2.21 Requirement 17: Amendments to approved details. This requirement allows for details which have been submitted to and approved by the Planning Authority to be amended and/or varied in writing by the Planning Authority. Any such amendment or variation must be in accordance with the principles and assessments set out in the Environmental Statement, and must not give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement.
- 5.2.22 Requirement 18: Consultation. This requirement provides that, where the Planning Authority is required to consult with another person or body before discharging a requirement of the Order, the undertaker must consult with that person or body prior to making an application to discharge the requirement.

*Part 2: Procedure for discharge of requirements*

- 5.2.23 This section provides a bespoke procedure for dealing with an application made to the 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. This Part of the Schedule makes provision for appeals to be made in the event of a refusal of an application or if the 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 unduly delayed. Deemed consent of applications is required for the same reason, and ensures that implementation of the

authorised development - as critical national priority infrastructure - will not be unduly delayed by the discharge of requirements.

**5.3 Schedule 3 (Streets subject to street works)**

5.3.1 This Schedule sets out the streets that are to be subject to street works pursuant to article 10 (street works).

**5.4 Schedule 4 (Alteration of streets)**

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

**5.5 Schedule 5 (Public rights of way to be temporarily stopped up)**

5.5.1 This Schedule lists the rights of way which will be temporarily stopped up during the construction of the authorised development, in accordance with article 14 (Temporary stopping up and permitting vehicular use on public rights of way).

**5.6 Schedule 6 (Access to works)**

5.6.1 This Schedule lists those areas where the undertaker has the power to form and lay out permanent means of access pursuant to article 15 (access to works).

**5.7 Schedule 7 (Land in which only new rights etc. may be acquired)**

5.7.1 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 in terms of article 23 (compulsory acquisition of rights). The plot numbers in column (1) of the table correlate with the Land Plans, column (2) with the relevant work numbers, and column (3) explains the purposes for which rights over land may be acquired.

**5.8 Schedule 8 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)**

5.8.1 This Schedule relates to article 23 (compulsory acquisition of rights), and modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965.

**5.9 Schedule 9 (Protective provisions)**

5.9.1 This Schedule sets out protective provisions for the benefit of statutory undertakers whose assets may be affected by the authorised development, and is given effect by article 45 (protective provisions).

5.9.2 The Schedule currently contains protective provisions for the benefit of defined classes of undertakers (electricity, gas, water and sewerage undertakers) at Part 1, electronic communications code operators at Part 2, drainage authorities at Part 3, and the Environment Agency at Part 4.

**5.10 Schedule 10 (Arbitration rules)**

5.10.1 This Schedule sets out the arbitration rules provided for in article 42 (arbitration).

5.10.2 The intention behind these rules is to achieve a fair, impartial and binding award on substantive differences between the parties. They seek to achieve determination of disputes within 4 months from the date the arbitrator is first appointed to ensure that any disputes are resolved quickly. In the context of the authorised development's status as critical national priority infrastructure, it is considered desirable that any disputes are resolved promptly to enable the delivery of the authorised development as timeously as possible.

**5.11 Schedule 11 (Documents to be certified)**

5.11.1 This Schedule lists those documents referred to in article 38 (certification of plans, etc.) as requiring certification by the Secretary of State.