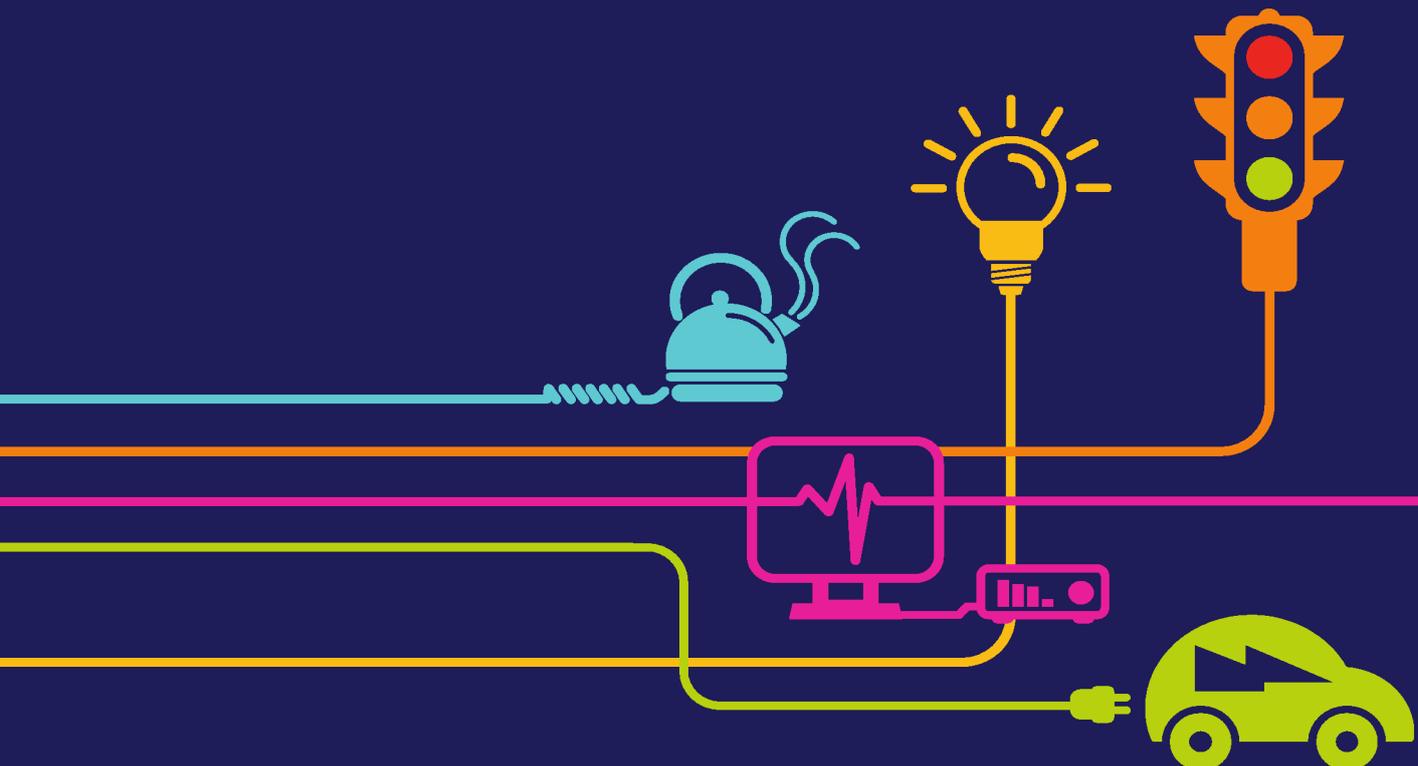


# Draft Explanatory Memorandum

National Grid (North Wales Connection Project)

*Regulation 5(2)(c) of the Infrastructure Planning  
(Applications: Prescribed Forms and Procedure) Regulations 2009*



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**The Planning Act 2008**

**The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009**

**Regulation 5(2)(c)**

**The proposed National Grid (North Wales Connection) Development Consent Order**

**Explanatory Memorandum**

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## Introduction

- 1.1 This memorandum explains the purpose and effect of each article of, and the Schedules to, the draft National Grid (North Wales Connection Project) Order (“the Order”), as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>a</sup>.
- 1.2 The Order is based on the General Model Provisions (the “general model provisions”) in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the “Model Provisions Order 2009”<sup>b</sup>) unless otherwise stated<sup>c</sup>. The general model provisions were followed because there are no model provisions for electric lines.
- 1.3 The Localism Act 2011 removed the requirement for the decision maker to have regard to the general model provisions in deciding applications and so they no longer have any formal legal status. Secondary legislation under the Localism Act also removed the requirement on an applicant to explain in the explanatory memorandum divergences from the Model Provisions, although it is noted that the “Legislation” page of the Planning Inspectorate’s website states:

*“...that it may though still be useful and helpful for applicants to show how and why they have departed from the Model Provisions Order in their applications”.*
- 1.4 Paragraph 1.5 of the Planning Inspectorate’s Advice Note 15<sup>d</sup> states that *“If a draft DCO includes wording derived from other made DCOs, this should be explained in the Explanatory Memorandum. The Explanatory Memorandum should explain why that particular wording is relevant to the proposed draft DCO, for example detailing what is factually similar for both the relevant consented NSIP and the Proposed Development... the ExA and Secretary of State will need to understand why it is appropriate for the scheme applied for. Any divergence in wording from the consented DCO drafting should also be explained.”*
- 1.5 Where there is a departure from the general model provisions, or an article is based on other precedent orders, an explanation of the new

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

<sup>b</sup> S.I. 2009/2265.

<sup>c</sup> Although the Model Provisions Order 2009 lapsed on the repeal of the enabling power in section 38 of the Planning Act, and the Planning Inspectorate’s Advice Note 15 (published in July 2018) removed the requirement to append to the Explanatory Memorandum a comparison of the draft DCO showing departures from the model provisions, the model provisions continue to provide a helpful guide to drafting.

<sup>d</sup> Published in July 2018.

provision is provided. In general, the precedents followed for the Order are other development consent orders for electric lines (primarily the National Grid (Richborough Connection Project) Development Consent Order 2017<sup>a</sup>, the National Grid (Hinkley Point C Connection Project) Order 2016<sup>b</sup> and the National Grid (North London Reinforcement Project) Order 2014,<sup>c</sup> as well as development consent orders and Transport and Works Act Order for other linear schemes, such as the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>d</sup> and railways and tramways developments.

- 1.6 The Order does not include model provisions which are not relevant or applicable to the proposed development and this explanatory memorandum does not seek to explain further their omission.

## **1 Purpose of the Order**

*Nationally Significant Infrastructure Project – installation of above ground electric line*

- 2.1 National Grid Electricity Transmission plc (“National Grid”) is applying to the Secretary of State for a development consent order (“DCO”) for the North Wales Connection which would authorise works to the national electricity transmission system between Wylfa on Anglesey and Pentir in Gwynedd. The proposed development is required to provide sufficient transmission capacity to enable a connection between the proposed new Horizon Nuclear Power Station at Wylfa Newydd on Anglesey and the existing electricity transmission network in North Wales.
- 2.2 The proposed development provides a new 400 kilovolt (kV) connection between the existing substations at Wylfa and Pentir and includes the following principal components:
- Modifications to the existing substation at Wylfa;
  - Sections of new 400 kV overhead line (OHL) between Wylfa substation and Braint Tunnel Head House (THH) and Cable Sealing End Compound (CSEC) on Anglesey, including modifications to parts of the existing 400kV OHL between Wylfa and Pentir;
  - Braint THH and CSEC on Anglesey;
  - Tunnel and 400kV cables between Braint and Tŷ Fodol THH;
  - Tŷ Fodol THH and CSEC in Gwynedd;
  - New section of 400 kV OHL between Tŷ Fodol THH and CSEC and Pentir Substation;

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<sup>a</sup> S.I. 2017/817 (as corrected by S.I. 2018/572).

<sup>b</sup> S.I. 2016/49 (as corrected by S.I. 2017/786)

<sup>c</sup> S.I. 2014/1052

<sup>d</sup> S.I. 2014/2384

- Extension to the existing substation at Pentir; and
  - Temporary construction compounds, access tracks, construction working areas and third party works that are required to construct the infrastructure listed above.
- 2.3 A more detailed description of the proposed development is provided at Chapter 3 of the Environmental Statement.
- 2.4 The proposed development lies wholly within Wales and includes the installation of a 400kV electric line above ground. It is therefore a nationally significant infrastructure project (“NSIP”) for the purposes of sections 14(1)(b) and 16 of the Planning Act 2008<sup>a</sup> (the “Act”).
- 2.5 As the proposed development is an NSIP, development consent must be obtained to authorise it<sup>b</sup>, and any application for a development consent order must be made to the Secretary of State under section 37 of the Act.
- 2.6 Schedule 1 to the Order contains a list of numbered works comprising the proposed development. The proposed development includes works of a description in section 14(1)(b) of the Act (the installation of an electric line above ground), Associated Development, and other matters that are included as ancillary to the development as described in sections 120(3) and (4) and Part 1, Schedule 5 of the Act.
- 2.7 National Grid considers that all elements of the proposed development are, or form part of, an NSIP, or are Associated Development.

## **2 Ancillary matters**

- 3.1 The Order also contains powers that are ancillary to the authorised development (i.e. provisions not consisting of development) in accordance with section 120(3) of the Act.
- 3.2 The main ancillary matter is a power to acquire land or create or interfere with rights compulsorily or by agreement, in accordance with section 120(4) and Part 1, Schedule 5 of the Act. The Order also contains powers of compulsory acquisition for land required for the authorised development, or to facilitate, or that is incidental to the authorised development under section 122 of the Act. It also seeks associated powers including the acquisition of rights necessary to operate and maintain the authorised development. A justification for the powers of compulsory acquisition is set out in the Statement of Reasons that accompanies the application.

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<sup>a</sup> c.29.

<sup>b</sup> S.31 of the Act.

- 3.3 The Order seeks to apply and modify statutory provisions, including in relation to the compulsory acquisition of land. In such cases, sections 117 and 120(5) of the Act require that the Order be made by Statutory Instrument. The Order is, therefore, drafted in that form.

### **3 Draft Order**

- 4.1 The draft Order is based on the National Grid (Hinkley Point C Connection Project) Order 2016<sup>a</sup> and the National Grid (Richborough Connection Project) Development Consent Order 2017<sup>b</sup>, with certain provisions also (due to the tunnelled element) drawing on the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>c</sup>. The draft Order is also based on the general model provisions and reference is also made to the railway model provisions within the Model Provisions Order 2009, given the linear nature of the project.

#### *Authorised development*

- 4.2 The general model provisions refer to “the authorised project” which comprises “the authorised development” and “the ancillary works”. The Order does not use the term “ancillary works”, as no works are proposed which are not also development, and therefore the Order does not require a definition of “the authorised project” which is distinct from “the authorised development”. Accordingly, references in the model provisions to “the authorised project” have been replaced in the Order by references to “the authorised development”.

#### *Deemed approvals*

- 4.3 Previous Orders (for example, the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017) have included articles which contain a provision by which the promoter must obtain consent, agreement or approval from a third party before it may do something and that such consent, agreement or approval shall not be unreasonably withheld. They, and other made orders, have also included a default longstop provision to the effect that, if the relevant third party fails to respond within a specified period, certain consents, agreements or approvals shall be deemed to have been given.
- 4.4 National Grid considers this approach to be necessary to remove the possibility for undue delay and to provide certainty that the authorised development can be delivered in a timely fashion. This approach is also considered to be proportionate in that, having undertaken extensive pre-application consultation and the Order having been

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<sup>a</sup> S.I. 2016/0049 (as amended)

<sup>b</sup> S.I. 2017/817

<sup>c</sup> S.I. 2014/2384 (as amended)

rigorously examined, the delivery of the authorised development should not be held up unreasonably, if it has been approved by the Secretary of State.

- 4.5 The draft Order includes, therefore, at articles 13(5) (power to alter layout, etc. of streets); 14(7) (temporary stopping up of streets and public rights of way); 15(2) (access to works); 18(9) (discharge of water); 20(7) (authority to survey and investigate land) and 47(8) (traffic regulation) a deemed consenting regime. This applies whereby if a consent etc. is required, and no such consent etc. is provided within 28 days of receiving an application for consent or approval, the consenting authority is deemed to have granted consent. The same 28 day period is used in the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017, and is considered to be proportionate to each of the applications made, whilst ensuring that the delivery of the scheme is not unnecessarily delayed by means outside the control of National Grid.
- 4.6 The provisions of the draft Order are now explained in sequence, giving reasons for any departure from the precedents noted above.

#### **4 Part 1 – Preliminary**

##### *Preamble*

- 5.1 The Order, in common with all statutory instruments, is introduced by a preamble.

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

- 5.2 Article 1 sets out the name and commencement date of the Order.

##### *Article 2 (Interpretation)*

- 5.3 Article 2(1) defines terms used in the remainder of the Order. The definitions used in the general model provisions are amended and supplemented to reflect the particular circumstances of the project and changes to the Act which have been made since it was originally enacted.
- 5.4 A number of definitions are added, including: “the 1981 Act”; “the 2009 Act”, “the 2016 Act”, “Access and Rights of Way Plans”; “commence”, “electric line”, “electronic transmission”; “limits of deviation”; “maintain”; and “traffic”.
- 5.5 Several of these additional definitions are the same as those in the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent

Order 2017 and, where this is the case, the wording of those additional definitions is identical.

- 5.6 As in the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017, a detailed definition of the “Construction Environmental Management Plan” and its associated plans and strategies (together with Document numbers) has been added to confirm which versions of the documents will be certified and which will inform the various mitigation strategies and measures to limit any impact caused by the construction of the authorised development.
- 5.7 “The undertaker” is defined as National Grid Electricity Transmission plc in relation to the authorised development and SP Manweb Plc in relation to the SP Manweb Works. This approach was adopted in the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017. The SP Manweb Works are also defined in article 2 as those works to SP Manweb assets or equipment forming part of the authorised development. This approach differs from the approach adopted in the National Grid (Hinkley Point C Connection Project) Order 2016 because the nature of the SP Manweb Works is much less extensive (and is more sporadic in nature) than the distribution network operator’s works under the National Grid (Hinkley Point C Connection Project) Order 2016.
- 5.8 As is explained above, the definition of ‘undertaker’ includes both National Grid and SP Manweb. In this document, the terms ‘National Grid’ and ‘SP Manweb’ are also used. Save where both National Grid and SP Manweb are mentioned in the same paragraph, a reference to ‘the undertaker’ in this document also applies to SP Manweb in so much as the provisions of the Order have effect for the benefit of SP Manweb in respect of the SP Manweb Works (see article 6 Benefit of Order) as well as National Grid in respect of the authorised development.
- 5.9 A detailed definition of the “environmental statement” has also been given to reflect any subsequent submissions of various environmental statement documents to the Examination. Whilst the approach to this definition is adopted from the National Grid (Hinkley Point C Connection Project) Order 2016, the Order extends this definition to include any environmental statement that may be submitted for the purpose of complying with and/or discharging the Requirements. This will ensure that the authorised development is constructed in accordance with any such approved submissions.
- 5.10 The definition of “maintain” has been amended from the definition contained in the National Grid (Hinkley Point C Connection Project) Order 2016, to add the ability to dismantle, refurbish, decommission, or improve the authorised development. This is to take into account the

range of works that National Grid considers it may reasonably need to carry out over the lifetime of the authorised development to ensure a safe and efficient connection. The Order restricts this definition such that the ability to maintain does not vary the scheme beyond the definition of the authorised development. Reference has been included to enable National Grid to use technology, such as drones, in its maintenance activities. This is appropriate to ensure that National Grid can maintain the authorised development using the most efficient and least disruptive methods available to it. The context in which National Grid can (or is required to) maintain is set out in the relevant article.

- 5.11 The definition of “operational use” has been adapted from the National Grid (Hinkley Point C Connection Project) Order 2016 to fit with the specific circumstances of the proposed development. The reference to 400kV relates to National Grid apparatus and the reference to lower voltages relates to SP Manweb apparatus, which includes 11kV, 33kV and 133kV.
- 5.12 The definition of “Order land” is land shown on the Land Plans and described in the Book of Reference.
- 5.13 Other amendments have been made to the definitions used in the general model provisions, including that “relevant planning authority” has been amended to refer to the local planning authority for the areas to which the specific provision relates. This is necessary as the authorised development passes through more than one local planning authority area. Identical wording is contained in the National Grid (Hinkley Point C Connection Project) Order 2016.
- 5.14 Unlike the National Grid (Hinkley Point C Connection Project) Order 2016, this Order does not include definitions of “Deemed Marine Licence”, “MMO”, or “Port Authority” as they are not applicable in the circumstances of this Order.
- 5.15 The definition of “the 2016 Act” is required following the coming into force of certain provisions of the Housing and Planning Act 2016.
- 5.16 A new definition of “commence” has been added. This is intended to clarify when works forming part of the authorised development are begun, with reference to section 155(2) of the Act. Certain activities (including site clearance, demolition, surveys and investigations, and the establishment of site offices and construction compounds) are excluded from this definition to ensure that the applicant is not restricted from carrying out standard ‘site set up’ works before complying with any pre-commencement Requirements. This is an extended version of the definition contained in Schedule 3 (requirements) to the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017. The inclusion of the

additional activities is appropriate and proportionate, given the definition's only use at article 37 (extinguishment and suspension of private rights). For the purposes of the Requirements listed in Schedule 3 to the Order, a specific definition is included in Schedule 3 which applies in place of the general definition.

- 5.17 A new definition of “electric line” has been added, which cross refers to the meaning specified in the 2008 Act, and which provides examples of the types of apparatus which forms part of an electric line.
- 5.18 A definition of “statutory undertaker” has been included by cross reference to the 2008 Act (being the salient primary legislation). This mirrors the definition in the National Grid (Hinkley Point C Connection Project) Order 2016.
- 5.19 Article 2(2) has been amended to clarify references to the imposition of restrictions on the Order land. This wording is almost identical to the wording in the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017, save that “in respect of land” has been added to clarify that it is only the restrictions in respect of land which are references to restrictions over land which interfere with the interest or rights of another and which are for the benefit of land which is acquired.
- 5.20 Article 2(3) defines measurements as approximate, in line with the general model provisions. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order there is no issue over whether the works are permitted by the Order. This provision allows for a small tolerance with respect to any distances and points, although all works will take place within the Order limits. It is commonplace to include such a provision in an Act or instrument authorising linear infrastructure<sup>a</sup> and similar wording is included in the National Grid (Hinkley Point C Connection Project) Order 2016. The Order further specifies that distances for linear works are to be measured along the centre line for those works, and that pylon identification numbers are identified by reference to the centre line of those works and are subject to the limits of deviation for those works. Additionally, it is specified that the tower numbering and location of towers may adjust in accordance with the limits of deviation.
- 5.21 In addition at Article 2(3), wording has been added in respect of the tunnelled section of the proposed development, for the same reason as the initial part of that paragraph, but expressly dealing with the facets of a tunnel. Substantially similar wording was included in the

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<sup>a</sup> See, for example, section 56(5)(c) of the Crossrail Act 2008. Also, see article 2(4) of the Rookery South (Resource Recovery Facility) Order 2011.

Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, article 2(4).

- 5.22 Articles 2(4) to (7) are not in the general model provisions. Article 2(4) provides that areas given in the book of reference are approximate since the book of reference is outside the scope of Article 2(3).
- 5.23 Articles 2(5) to (6) explain how references in the Order to letters or numbered points and to numbered works are to be construed. Article 2(7) confirms that any reference to Documents in the Order are references to documents submitted by National Grid in support of the application for the Order. Substantially similar wording is included in the National Grid (Hinkley Point C Connection Project) Order 2016.
- 5.24 Article 2(8) provides that any references to legislation include amendments to such legislation.

## **5 Part 2 – Principal powers**

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

- 6.1 Article 3 grants development consent for the authorised development within the Order limits. The authorised development is described in Schedule 1. The development consent is subject to the Requirements set out in Schedule 3. The wording of article 3 is similar to, and has the same effect as, the wording in the National Grid (Richborough Connection Project) Development Consent Order 2017 and includes wording from the National Grid (Hinkley Point C Connection Project) Order 2016.
- 6.2 There are no “ancillary works” for the project within the meaning given in article 1 of the general model provisions, and so this term has been removed from article 3 and also from article 2 of the Order. This mirrors the position in the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017.
- 6.3 Article 3 grants development consent to National Grid to carry out any of the authorised development. Article 3 also grants development consent to SP Manweb to carry out the works to the local electricity distribution network (the SP Manweb Works), subject to SP Manweb having carried out the SP Manweb Works without National Grid needing to step in.
- 6.4 Paragraphs (2) and (3) of article 3 reflect section 141 of the Act, and provide that National Grid and SP Manweb have authority to install and keep installed the above-ground electric lines, underground cables and any telemetry included in those works. These paragraphs also allow National Grid and SP Manweb to remove or replace any pylon that requires removal as part of the authorised development. In particular,

this power relates to transpositions which are designed to reduce localised effects on the environment and properties to enable National Grid to swap the line over from one side of the route to the other, and also to the exercise of the maintenance power at Article 4. As part of the transposition works, and as part of the exercise of the maintenance power, pylons will need to be removed and replaced.

- 6.5 Paragraphs (4) and (5) allow National Grid and SP Manweb to operate and use the electric line and any other elements of the authorised development and SP Manweb Works respectively as part of the electricity transmission and distribution network in England and Wales. The provision is necessary to allow the undertaker to operate and use the authorised development for the purposes for which it was designed, in accordance with the provisions of the Order and the attached Requirements.
- 6.6 Paragraph (6) specifies that the development consent granted by the Order allows works (including demolition of buildings or other structures) within the Order limits to the extent that they are required by or incidental to the carrying out of the authorised development, as permitted by section 120(3) of the Act.
- 6.7 Paragraph (7) of article 3 confirms the limits of deviation within which the works described in Schedule 1 must be carried out. Further commentary on the limits of deviation is provided below in relation to article 5.
- 6.8 Paragraph (8) gives effect to Schedule 3 (requirements).

*Article 4 (Maintenance of authorised development)*

- 6.9 This article sets out the scope within which National Grid may maintain the authorised development and SP Manweb may maintain the SP Manweb works. The wording in article 3 of the general model provisions is replicated for each of National Grid and SP Manweb. “Maintain” is defined in article 2.

*Article 5 (Limits of deviation)*

- 6.10 Article 5 incorporates a provision which is included in the railway model provisions and which is appropriate in the context of linear projects. These limits relate to the linear works, and allow for the lateral deviation of linear works within the lines shown on the works plans. They allow for:
  - (a) the vertical deviation of the pylons, not exceeding 6 metres upwards. The vertical limits of deviation have been set to 6 metres because this equates to two standard three metre extension panels. This is a greater upward deviation than was required in the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough

Connection Project) Development Consent Order 2017, but it is necessary and appropriate in the Order to ensure that synchronicity with the existing overhead electric line can be maintained;

- (b) the downwards deviation of the pylons to any extent as the undertaker considers necessary or convenient. This is adapted from the wording in the DCO general model provisions and also the TWA model provisions and is common in linear projects including the National Grid (Richborough Connection Project) Development Consent Order 2017. Flexibility in downwards deviation is required so that any construction can reflect extant ground conditions when the works are carried out.
- (c) The vertical deviation (both upwards and downwards) of the overhead conductors and fibre-optic earth wires to such extent as the undertaker considers necessary or convenient. This is necessary because the height of the conductors and fibre-optic earth wires are functions of the position and height of the pylons. This means that if, for example, a pylon height changes, or the pylons are placed closer together or further apart, the height of the conductors and fibre-optic earth wires will also change. The upwards limits of deviation will be restricted by the upwards limits of deviation for the pylons. Clearance regulations contained in the Electricity Safety, Quality and Continuity Regulations 2002<sup>a</sup> will apply to the overhead conductors and fibre-optic earth wires and, hence, will restrict the downward limits of deviation because that clearance must be maintained;
- (d) in respect of the main underground tunnel, the vertical limits of deviation are upwards such that the minimum distance that will be kept between the top of the tunnel and the bedrock is always 10 metres. Vertical deviation downwards for the main underground tunnel is to such extent as the undertaker considers necessary or convenient; and
- (e) the works plans and design drawings show the horizontal limits of deviation for the main underground tunnel. The approach to the vertical limits and the approach to the horizontal limits of deviation in respect of the main tunnel is influenced by the nature of the ground conditions found there, which includes two geological faults. Hence, the horizontal limits of deviation are wider so that, whatever ground conditions are encountered, there is sufficient flexibility to deliver the tunnelled section within the horizontal and vertical limits of deviation.

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<sup>a</sup> S.I. 2002/2665.

- 6.11 In respect of other above ground structures, erections and apparatus including substations and cable sealing end compounds forming part of the authorised development, upwards deviation shall not exceed the maximum height shown on the parameter plans (within the design drawings) and any horizontal deviation shall be within the parameters shown on the parameter plans (within the design drawings).
- 6.12 The purpose of this provision is to provide the necessary flexibility when constructing the authorised development, reducing the risk that the project as approved cannot later be implemented for unforeseen engineering or geological reasons. That said, when each of the limits of deviation for the overhead electric line are viewed as a whole, the overall flexibility is more limited because the combination of these limits of deviation restricts each of the individual limits of deviation. In addition, the objective of maintaining synchronicity with the existing overhead electric line will further define these limits of deviation.
- 6.13 The horizontal limits of deviation for all linear works are shown on the works plans. These constrain the location of these linear works within the limits of deviation, but the definition does allow construction activities for those works to be carried out anywhere within the Order limits.
- 6.14 A similar approach to the overhead line works has been adopted on the National Grid (Hinkley Point C Connection Project) Order 2016 and The National Grid (King's Lynn B Power Station Connection) Order 2013<sup>a</sup>, although the Order breaks down the limits of deviation to account for the differing requirements of each element of the authorised development.

*Article 6 (Benefit of Order)*

- 6.15 This article is a departure from the general model provisions (article 4) and overrides section 156(1) of the Act (as permitted by section 156(2)) which, if applied, would confer the benefit of the Order on anyone with an interest in the land). Statutory powers may usually only be exercised by the body on whom they are conferred.
- 6.16 It is appropriate in this case for the Order powers, subject to article 7 (Consent to transfer benefit of Order), to be exercised only by National Grid (or SP Manweb in the case of the SP Manweb Works).
- 6.17 Article 6(1) confirms this position, specifying in paragraph (1) that those provisions in the Order in respect of the authorised development are for the benefit of National Grid, and those provisions in respect of the SP Manweb Works are for the benefit of SP Manweb (unless SP Manweb fails to carry out the SP Manweb Works and National Grid

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<sup>a</sup> S.I. 2013/3200.

serves notice that it intends to carry out the SP Manweb Works instead.)

- 6.18 By this means, SP Manweb enjoys the benefit of the Order as well as National Grid, so far as the SP Manweb Works are concerned, including the powers to obtain the necessary interests in land and to take possession of land temporarily.
- 6.19 This approach also safeguards National Grid's ability to carry out the SP Manweb Works itself (if required) as part of the authorised development.
- 6.20 By article 6(3), SP Manweb may not exercise the development consent for the SP Manweb Works conferred on it without the consent of, and subject to such reasonable conditions imposed by, National Grid.
- 6.21 Articles 6(4) and (5) confirm the position that, if SP Manweb fails to carry out the SP Manweb Works (or part of them), National Grid can carry out the SP Manweb Works (or the relevant part of them), on giving notice to SP Manweb and the Secretary of State, and that SP Manweb is to cease to have the benefit of articles 3(1)(b) and 6(1)(b) on the date specified in the notice and National Grid can benefit from SP Manweb's temporary possession powers under article 27. This termination of SP Manweb's ability to rely on articles 3(1)(b) and 6(1)(b) does not affect its ability to keep installed the electric line and other works included in the SP Manweb Works, maintain the SP Manweb Works. Works done and actions undertaken before the issue of the notice by National Grid would therefore still be appropriately authorised. The wording of article 6(5) closely follows the Richborough Connection Project Development Consent Order 2017 (as amended by the Richborough Connection Project Correction Order 2018).
- 6.22 The provisions of this Article are substantially similar to those contained in the National Grid (Hinkley C Point Connection) Order 2016, save that paragraph (2) has been added, reflecting the drafting in the draft Yorkshire and Humber CCS Cross Country Pipeline Order (as promoted by National Grid Carbon). Paragraph (2) excepts works which are carried out for the benefit or protection of persons or land affected by the authorised development, so that it is clear that in these cases the benefit of the "planning permission" equivalent of the Order, i.e. development consent, for those mitigation works is not personal to the undertaker but also for the users of the relevant land.

*Article 7 (Consent to transfer benefit of Order)*

- 6.23 This article allows any or all of the benefits of the provision of the Order to be transferred, with the consent of the Secretary of State, to others. The wording of Article 7 is based on Article 5 of the general model provisions, with minor project-specific amendments, and is

substantially similar to Article 7 of the National Grid (Richborough Connection Project) Development Consent Order 2017.

- 6.24 Article 7(3) ensures that any other party that exercises any benefits of rights conferred on it by any transfer or grant, is subject to the same restrictions, liabilities and obligations as would apply if those benefits and rights were exercised by National Grid or SP Manweb.
- 6.25 This article is subject to the provisions of Article 6 in relation to any rights or benefits in relation to the SP Manweb Works that are transferred or granted by SP Manweb.

*Article 8 (Application of the 1990 Act)*

- 6.26 Article 8(1) applies to specified works which, though temporary in nature, would be in place for a considerable period of time. The article applies section 57(2) of the Town and Country Planning Act 1990 to those works to clarify that planning permission is not required for the resumption, at the end of that period, of the purpose for which that land was normally used before the development consent was granted. A similar provision is included at Article 10 of the National Grid Hinkley Point C (Nuclear Generating Station) Order 2013<sup>a</sup> and at Article 8 of the National Grid (Hinkley Point C Connection Project) Order 2016 and is appropriate in this case to avoid disproportionate administrative burden on both landowners and the relevant planning authority once these temporary construction works have ceased.
- 6.27 Article 8(2) follows article 36 of the general model provisions and provides that for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990, the development consent granted by the Order shall be treated as specific planning permission. This means that the land subject to the authorised project will be the operational land of the undertaker as a statutory undertaker and, therefore, is land on which National Grid and/or SP Manweb is permitted to carry out its undertaking. Statutory undertakers can make an application for planning permission on their operational land under section 266 TCPA 1990 and that application will be dealt with by the Secretary of State and the appropriate Minister. In addition, in respect of operational land certain permitted development rights may apply. This is appropriate and proportionate for inclusion in the draft Order as it will mean that, once constructed and into their operational phase, the works are treated as part of the wider network of which they will be part, on an equivalent legal basis. This provision is also included at Article 37 of the National Grid (Hinkley Point C Connection Project) Order 2016 and Article 36 of the National Grid (Richborough Connection Project) Order 2017.

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<sup>a</sup> S.I. 2013/648.

6.28 Additional provision has also been made at paragraph (3) to provide for planning permission in relation to powers to carry out certain street works (pursuant to article 11(2)). This is because such matters may be outside of the Order limits, and hence the article provides that such works are not deemed to constitute development. Article 8(2) and (3) mirror the provisions of Article 51 of The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, and Article 8(2) is also included at Article 37 of the National Grid (Hinkley Point C Connection Project) Order 2016.

*Article 9 (Application of the Community Infrastructure Levy Regulations 2010)*

6.29 This article applies to specified works which, though temporary in nature, would be in place for a considerable period of time. It provides that the development consent granted for the temporary works is to be treated for the purposes of the Community Infrastructure Levy Regulations 2010 as a planning permission granted for a temporary period. The community infrastructure levy (CIL) is not chargeable on temporary planning permissions, so this would have the effect of excluding the specified temporary works from the CIL charging provisions. Identical wording is included at article 9 of the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017.

*Article 10 (Planning permission)*

6.30 Insofar as National Grid needs to get other planning permission for anything relating to the authorised development (i.e. to facilitate its completion, construction, use or operation), this article seeks to avoid any question as to the interface between any such planning permission and this Order (i.e. these planning permissions will not constitute a breach of the terms of this Order).

## **6 Part 3 – Streets**

*Article 11 (Street works)*

7.1 This article confers authority on the undertaker to interfere with and execute works in or under certain streets, which are specified in Schedule 5 (*streets subject to street works*) within the Order Limits and on other streets within or outside of the Order limits for the purposes of (or for purposes ancillary to) the authorised development. This article follows the general model provisions except in the following respects:

- (a) Article 8(3) of the general model provisions is deleted as it is believed that the model provision may cause confusion. The intention, it is assumed, behind paragraph (3), which applies sections 54 to 106 of the 1991 Act to any street works authority, is to ensure that the relevant provisions of the 1991 Act which apply to street works apply also to other works in streets

authorised by this article. As drafted, however, the model provision causes some confusion. It seems more sensible to extend article 12 of the Order which applies selected provisions of the 1991 Act to temporary stopping up of streets even if no street works (within the meaning of the 1991 Act) are being carried out.

- (b) The list of the types of works that the undertaker is authorised to carry out has been expanded from article 8(1) of the general model provisions. Article 11(1)(a) is extended to enable the break up or opening of any sewer, drain or tunnel within the street. Article 11(1)(b) is adapted to add the carrying out of any works to strengthen or repair the carriageway. Article 11(1)(c) has been included to reflect the street works powers available to National Grid in paragraph 1(b)(iii) of Schedule 4 to the Electricity Act 1989<sup>a</sup>. Article 11(1)(e) permits the maintenance, renewal or alteration of apparatus in or on the street or a change to its position. Article 11(1)(f) includes the right to provide or improve sight lines required by the highway authority. Article 11(1)(g) includes the right to provide and maintain hard or soft landscaping measures in the street. Article 11(1)(h) includes the right to carry out re-lining and the placement of temporary markings. These additional provisions relate to the authorised development, as permitted by Sections 120(3) and (4) together with item 15 of Part 1 of Schedule 5 to the Act, namely carrying out civil engineering or other works. They are also necessary and expedient to give full effect to the power to carry out the development authorised under article 3 of the Order (*development consent etc. granted by the Order*), as permitted under Section 120(5) of the Act.
- (c) Article 11(2) has been taken from article 11(2) of The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 with a minor modification as described below. This provision allows the undertaker (with the consent of the street authority) to enter onto any other street (i.e. one not listed in Schedule 5 and whether or not it is in the Order limits) for the purposes of the authorised development and, in this instance, for purposes ancillary to the authorised development, to carry out the street works authorised by Article 11(1). The rationale for the inclusion of this ability to carry out street works on streets not listed in Schedule 5 and/or outwith the order limits, is to cover off any instance where the undertaker, in delivering the authorised development, finds it necessary to seek to carry out additional street works which are not set out in the schedule and/or are not within the order limits. It allows flexibility for the street authority to consent to such street works within the scope

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<sup>a</sup> c. 29.

of the DCO, rather than necessitating a separate standalone consent. This allows for such works to be delivered further to the same set of controls as set out within the DCO, given that such street works would be directly linked to the delivery of the authorised development.

- (d) A new sub-paragraph (4) has been included to make it clear that any powers conferred by article 11 do not limit those granted under the Electricity Act 1989. An identical provision is included in the National Grid (Hinkley Point C Connection Project) Order 2016.

7.2 General model provision 8(2), as reflected in article 11(3), provides that the authority given by paragraph (1) is a “statutory right” for the purposes of the New Roads and Street Works Act 1991<sup>a</sup>. The authority given by this article is a statutory right for the purposes of section 48(3) (Streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991, which means that the Order replaces the need to apply for a street works licence under that Act.

*Article 12 (Application of 1991 Act)*

7.3 This article departs from the general model provisions to provide that relevant provisions of the New Roads and Street Works Act 1991 shall apply to a temporary stopping up of a street under Article 14, even if no street works (within the meaning of the 1991 Act) are being carried out. This would, for example, require National Grid to make arrangements, so far as practicable, for utilities to gain access to their apparatus. Comparable provisions are commonly included in Transport and Works Act Orders, and have also appeared in Development Consent Orders with identical wording being included in the National Grid (Hinkley Point C Connection Project) Order 2016.

7.4 This article avoids confusion as to whether works in respect of a temporarily stopped up street are ‘street works’ for the purposes of the 1991 Act and also simplifies the implementation of those works by providing for a single process in respect of streets which are stopped up and those which are not.

*Article 13 (Power to alter the layout, etc. of streets)*

7.5 This article permits National Grid and anyone else with the benefit of the Order to alter, either permanently or temporarily, the layout of the streets listed in Part 1 (permanently) and Part 2 (temporarily) in Schedule 6 (*streets subject to alteration of layout*) to the Order for the purpose of the authorised development.

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<sup>a</sup> c. 22.

- 7.6 Article 13(2) provides a broader power to alter the layout of any street within or outwith the Order limits (i.e. where the street is not listed in Schedule 6) and the layout of any street having a junction with such a street. The consent of the street authority must be obtained, such consent not to be unreasonably withheld or delayed.
- 7.7 In this Order, the rationale for this broader power, which is replicated elsewhere in the Order, comes from Section 120(3) of the 2008 Act, which makes it plain that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.
- 7.8 Article 13(3) provides that any street altered temporarily under this article must be restored to the reasonable satisfaction of the street authority.
- 7.9 This article is not included in the general model provisions. This type of provision has precedent in recent linear schemes authorised by the Transport and Works Act 1992<sup>a</sup> and is based on the Model Clauses for Tramways contained in Schedule 2 to the Transport and Works (Model Clauses for Railways and Tramways) Order 2006<sup>b</sup>. Similar wording has been included in other development consent order applications for linear projects, such as the National Grid (Hinkley Point C Connection Project) Order 2016; the National Grid (North London Reinforcement Project) Order 2014; the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014; and the Network Rail (North Doncaster Chord) Development Consent Order 2012.
- 7.10 As explained earlier, a street authority that fails to respond to an application for consent within 28 days of the application being made is deemed to have given its consent. The rationale for such deemed consent provisions is set out above in paragraphs 4.3 – 4.5.
- 7.11 This provision is necessary and expedient to give full effect to the power to carry out the authorised development as is provided for under section 120(5) of the Act.

*Article 14 (Temporary stopping up of streets and public rights of way)*

- 7.12 This article provides for the temporary stopping up, alteration or diversion of streets or public rights of way shown on the access and rights of way plans or within Order limits. In relation to those streets and public rights of way listed in Schedule 7, National Grid must first consult with the relevant street authority. In relation to streets and public rights of way not listed in the Schedule, the consent of the street

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<sup>a</sup> See the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011/1072).

<sup>b</sup> S.I. 2006/1954.

authority (which may impose reasonable conditions) must be obtained (such consent not to be unreasonably withheld or delayed).

- 7.13 This article, and Schedule 7 to which it relates, departs from the general model provision in a number of ways. In particular, it has been expanded to deal also with public rights of way (the general model provisions only provide for the permanent stopping up of footpaths). This approach was adopted in the National Grid (King's Lynn B Power Station Connection) Order 2013 and the National Grid (Hinkley Point C Connection Project) Order 2016.
- 7.14 A new paragraph (2) confers a power on National Grid to use a street or public right of way, which has been temporarily stopped up, altered or diverted, as a temporary working site. This provision has precedent in recent orders made under the Transport and Works Act 1992<sup>a</sup> and the wording contained in the Order is identical to the wording in the National Grid (Hinkley Point C Connection Project) Order 2016.
- 7.15 Paragraph (4) amends Article 14(3) of the general model provisions to make it clear that National Grid, when stopping up streets or public rights of way, must provide temporary diversions in relation to the streets and public rights of way listed in Part 1 of Schedule 7.
- 7.16 Paragraph (7) has been added (as previously explained) to impose a time limit of 28 days after which a street authority which fails to respond to an application for consent is deemed to have granted consent, so as not to delay the project unnecessarily. This provision has been used in other development consent orders such as the Network Rail (Ipswich Chord) Order 2012 and National Grid (Hinkley Point C Connection Project) Order 2016. As the works proposed under paragraph (5)(b) are temporary in nature, and this provision will provide greater flexibility and certainty in delivering the authorised development, it is considered that this approach is justified.

#### *Article 15 (Access to works)*

- 7.17 This article is based on article 12 of the general model provisions and confers upon the undertaker powers for the purposes of the authorised development, and ancillary purposes, to provide or improve access at the locations specified in Schedule 8 (access to works).
- 7.18 Similar powers are conferred in relation to any other locations within the Order limits reasonably required for the authorised development so long as the relevant planning authority consents following consultation with the highway authority (such consent not to be unreasonably

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<sup>a</sup> See the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006/3117); the Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010/1721); and the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011/1072).

withheld or delayed). The rationale for the inclusion of this ability to establish accesses elsewhere within the Order limits is to cover off any instance where the undertaker, in delivering the authorised development, finds it necessary to seek additional accesses which are not set out in the schedule. It allows flexibility for the street authority to consent to such accesses within the scope of the DCO rather than necessitating a separate standalone consent. This allows for such accesses to be delivered further to the same set of controls as set out within the DCO, given that such accesses would be directly linked to the delivery of the authorised development. The same approach was adopted in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

- 7.19 If the authority fails to respond to an application for consent within 28 days (as explained above), it will be deemed to have granted consent under article 15(2). Article 15(2) mirrors the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017. The rationale for such deemed consent provisions is set out in paragraphs 4.3 – 4.5 above.

*Article 16 (Construction, alteration and maintenance of streets)*

- 7.20 Article 16 is based on article 10 of the TWA Model Provisions and replicates article 12 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- 7.21 It creates a mechanism for any street constructed or area of street altered under the Order, to be adopted for maintenance at public expense, if it is completed to the reasonable satisfaction of the local highway authority and after a set maintenance period.
- 7.22 This provision is necessary to facilitate the adoption of new street further to the proposed alterations to streets as a result of article 12 (power to alter layout, etc. of streets) of the Order.
- 7.23 This provision may be included as an incidental provision to the consent for the authorised project at article 3 of the draft Order (development consent etc. granted by the Order) under section 120(5)(d) of the Act.
- 7.24 The article goes further than the Model Provision in that it also seeks to deal (article 16(3)) with the dedication of the altered street where the alterations have led to the creation of new public highway, at the end of the 12 month maintenance period.
- 7.25 Further incidental provision is made for the undertaker to have a defence against claims for loss or damage resulting from failure to maintain any street under this article if it can prove that it took all care reasonably necessary in the circumstances to ensure that the relevant

part of the street was not dangerous to traffic. The article sets out factors which a court can take into account in considering this defence. No offence is created.

- 7.26 The rationale for its inclusion is to provide a process within the Order which addresses the status of new street. However, it will always be open to the undertaker and the street authority to enter into any appropriate agreement further to article 17 (see below).

#### *Article 17 (Agreements with street authorities)*

- 7.27 This article follows article 13 of the general model provisions on which the National Grid (Hinkley Point C Connection Project) Order 2016 was based and allows National Grid and the relevant street authority to enter into agreements about the street works necessitated by the project which would (amongst other matters) allow the local authority to carry out such works under the terms of that agreement.
- 7.28 As permitted by section 120(5)(d) of the Act, the additional provisions at paragraphs 1(e), 2(c) and 2(e), supplement the powers in paragraphs 1(a) and 2(a) and article 4 of the Order (maintenance of the authorised development), which would allow for such streets to be repaired. These additional paragraphs are adapted from the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 17).
- 7.29 The power contained in this article is separate to any agreements made under section 278 of the Highways Act 1980 (which do not relate to powers under the Order but relate to a local authority devolving its powers (under section 278 of that Act)) and this article is, therefore necessary to permit such agreements.

## **7 Part 4 – Supplemental powers**

#### *Article 18 (Discharge of water)*

- 8.1 This article sets out the circumstances in which National Grid is entitled to discharge water into a sewer or watercourse. Essentially, this can be done with the consent of the owner of the sewer or watercourse. As explained earlier, if the person whose consent is required for the discharge of water fails to respond to an application for consent within 28 days of the application being made, consent is deemed to have been given. The rationale for such deemed consent provisions is set out in paragraphs 4.3 – 4.5 above.
- 8.2 Whilst work has been undertaken to understand the likely position, it is too early to identify the location of all discharges to private watercourses, as they will be very specific to ground conditions at the time of construction. National Grid has not therefore, at this time, approached any such owners though they will be contacted as soon as

possible when appropriate. Any owner that may potentially be affected will have been included in the consultation for the project.

- 8.3 The article is similar to the general model provision (article 14), except, in particular:
- (a) paragraph (8) is updated to reflect the repeal of section 85 of the Water Resources Act 1991<sup>a</sup> (which is referred to in the general model provisions) and its replacement by the Environmental Permitting (England and Wales) Regulations 2016<sup>b</sup>; and
  - (b) paragraph (9) has been added to provide that if an authority fails to respond within 28 days of an application for approval or consent under this article it shall be deemed to have been given or granted.
- 8.4 This article is substantially the same as Article 16 of the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017, save that any owner of a public sewer or drain to which the undertaker intends to make an opening must not unreasonably withhold or delay their consent to such opening, and the undertaker is not required to maintain a watercourse or public sewer or drain, or the drainage works. This responsibility will fall to the usual undertaker as is appropriate. A new definition of “main river” has been included for clarity and the definition of “watercourse” has been deleted to avoid repetition with the definition in Article 2.

#### *Article 19 (Protective works)*

- 8.5 This article sets out the circumstances in which protective works can be carried out to land, buildings, structures, apparatus or equipment, within the Order limits or which may be affected by the authorised development. Except in an emergency, 14 days’ notice must be given to the owner, and the owner can seek arbitration by serving a counter-notice. The power lasts until five years after the relevant part of the project comes into operation. There is an entitlement to compensation for loss or damage.
- 8.6 The article is based on article 15 of the general model provisions. Similar mechanisms are found in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 17 (Protective work to buildings)), the National Grid (Richborough Connection Project) Development Consent Order 2017 (article 17 (Protective work to buildings)) and the Thames Water Utilities Limited (Thames Tideway

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<sup>a</sup> c. 57.

<sup>b</sup> S.I. 2016/1154.

Tunnel) Order 2014 (articles 20 (Protective works to buildings and structures as listed in a schedule) and 21 (Remedial works to buildings or apparatus or equipment whether or not within the Order limits)).

- 8.7 The Order extends the power to carry out protective works from just buildings to land, buildings, structures, apparatus, equipment (similar to article 21 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014) and the authorised development, and allows the undertaker access to land within or outside of the Order limits to exercise this power (where reasonably necessary). This is necessary given the linear nature of the authorised development and also given the range of potential items that might necessitate protective works (which are defined in sub-paragraph (11) as being both protective and remedial works), and, in particular, the inclusion of this provision will help to mitigate the risk of unforeseen circumstances prejudicing the delivery of this nationally significant infrastructure project.

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

- 8.8 This article confers the power to enter land (which included land covered with water) within the Order limits or land which may be affected by the authorised development, for the purpose of surveying, monitoring or investigating it, including a power to make trial holes, boreholes, excavations and/or take horizontal cores (e.g. inclined boreholes for the purpose of geological fault modelling), carry out ecological or archaeological investigations or monitoring, and to use and leave apparatus (including attached to buoys) on the land for these purposes. The power of entry is subject to a requirement to give 14 days' notice to owners and occupiers of the land. Compensation is payable for any loss or damage as a result of the exercise of this power. The power to make trial holes is restricted in respect of highways or streets and requires the consent of the relevant highway or street authority, such consent being subject to the deemed approval provision which is justified above.
- 8.9 The article is based on the National Grid (Hinkley Point C Connection Project) Order 2016 (article 18), which in turn is based on the general model provision (with various drafting changes). Paragraph (1)(b) is added to include the power to survey and investigate land or buildings to establish the effect of the authorised development or to enable the authorised development to begin. New paragraph (1)(e) allows equipment used for ecological or archaeological investigations to be left on the land (along with other apparatus used in connection with the survey, monitoring or investigation of land). These two additional powers are adapted from the provisions of Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 22) and are necessary to ensure that this article provides authority for the types of activities that are likely to be necessary in respect of the authorised development.

- 8.10 In addition, the power in the general model provisions is extended to include the ability to take, and process, samples of water, air, soil or rock, flora, bodily excretions, non-human dead bodies, or any non-living thing present as a result of human action found on, in or over the land. This wording reflects the wording of section 53(3A) of the Act which clarifies that the right to enter land for the purposes of surveying includes the power to take and process certain types of samples. This may be included in a DCO under section 120(4) and item 12 of Part 1 of Schedule 5 of the Act, which makes particular provision for the inclusion of powers for carrying out surveys or taking of soil samples.
- 8.11 Article 20(4) ensures that landowners are provided with details of the undertaker's purpose for surveying, monitoring or investigating the land before the undertaker enters the land, and authorises the undertaker to take necessary vehicles and equipment onto the land to carry out the survey, monitoring or investigations.
- 8.12 The provision relates to, or is ancillary to, the authorised development within the scope of section 120(3) of the Act and is a matter specifically identified in paragraph 12 of Schedule 12 of the Act, which states that a development consent order can provide for the carrying out of surveys or taking of soil samples.

*Article 21 (Removal of human remains)*

- 8.13 This article is based on article 17 of the general model provisions and article 23 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. It requires the undertaker, before it carries out any development or works which will or may disturb any human remains, to remove those remains. Before removing any human remains, the undertaker is required to publish notice of its intention to do so. Notice is also required to be displayed near the site.
- 8.14 Any relative or personal representative of any deceased person whose remains are proposed to be removed may, at any time within 56 days of first publication of a notice by the undertaker, give notice to the undertaker of their intention to undertake the removal of the remains themselves and arrange for those remains to be re-interred or cremated. The undertaker will be responsible for the reasonable the costs incurred in responding to National Grid's notice and the reasonable costs re-interring or cremating the remains.
- 8.15 In the event that such relative or personal representative does not remove the remains, the undertaker is required to comply with any reasonable request the relative or personal representative may make in relation to the removal and re-interment or cremation of the remains.
- 8.16 In addition, paragraph (16) applies to this Order sections 238 and 239 of the 1990 Act, which ordinarily allow the use of consecrated land or burial grounds in accordance with a planning permission

notwithstanding ecclesiastical law, so that land acquired for the authorised development or temporarily used or in relation to which rights are acquired, has the same benefit of those 1990 Act sections as it would have done if the Order had been a planning permission. The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 included a substantively similar provision (at Schedule 19 part 1 paragraph 9(2)), save that paragraph (16) further clarifies the interpretation of terminology from the 1990 Act under the Order. Whilst it is noted that a similar provision was removed from the National Grid (Richborough Connection Project) Development Consent Order 2017, it is considered appropriate to include it in this Order, given the underground nature of the tunnel and shaft works.

## **8 Part 5 – Powers of Acquisition**

### *Article 22 (Compulsory acquisition of land)*

- 9.1 This article authorises the compulsory acquisition of so much of the Order land listed in the Book of Reference as is required for the construction, operation or maintenance of the authorised development or is incidental to it or necessary to facilitate it. This includes land at the Pentir substation site, and the two Tunnel Head House and Sealing End Compounds. This article only applies to National Grid as SP Manweb does not need to acquire any land compulsorily due to the nature of the SP Manweb Works.
- 9.2 This article is based on Article 18(1) of the general model provisions. General model provision paragraphs (2) and (3) have not been included. The former would provide for the automatic extinguishment of any rights applying to the Order land as soon as it is vested in the undertaker. This is inconsistent with the general model provision on private rights of way, which provides for the extinguishment of such rights on entry onto the land, which may take place ahead of vesting of the land. Vesting may actually take place after works, which conflict with the rights in question, have been carried out. It has therefore been considered preferable to extend the “rights of way” model clause to deal with private rights in general. Hence paragraphs (2) and (3) are omitted from this article.
- 9.3 The inclusion in Article 22 of wording authorising compulsory acquisition of such land that is required for the authorised development or is incidental to it or required for facilitate it, is based on Section 122(2) of the 2008 Act, which makes plain that compulsory acquisition of land etc. must be that which is required for the development to which the development consent relates, is required to facilitate or is incidental to that development, or is replacement land.
- 9.4 Subject to the above, almost identical wording appears in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 19).

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

- 9.5 This article allows National Grid to acquire rights (and impose restrictions) over the Order land, including by creating new rights for the purpose of the authorised development.
- 9.6 Paragraph (1) provides that National Grid may acquire or create rights as described in the book of reference with the general nature and extent of these rights also shown in the land plans.
- 9.7 As well as providing for the acquisition of rights, the article enables National Grid to impose restrictions (as described in the book of reference) over the Order land for the purposes of the authorised development. This power to impose restrictions on the use of land is considered a proportionate means of protecting the authorised development whilst minimising the extent of land to be compulsorily acquired. This power has appeared in Orders made under the Transport and Works Act 1992, particularly in contexts where it is necessary to restrict use of land or airspace above or beneath an authorised development which consists of a viaduct or tunnel. The power contained in the Order is almost identical to that contained in the National Grid (Richborough Connection Project) Development Consent Order 2017 (article 21), save that the article is also subject to article 22 (compulsory acquisition of land) which was not applicable on the National Grid (Richborough Connection Project) Development Consent Order 2017 as in that instance only rights were due to be acquired. The power to impose restrictions is appropriate in the context of the authorised development to restrict use of land or airspace above or beneath the overhead electric lines or underground cables. The plots and the restrictions to be imposed are confirmed and described in the book of reference.
- 9.8 As per the National Grid (Richborough Connection Project) Development Consent Order 2017, general model provision paragraph (2) has not been included as similar provision is instead included in article 37 (Extinguishment and suspension of private rights).
- 9.9 Paragraph (3) provides that where National Grid needs only to acquire rights over land or impose a restriction on that land, it shall not be obliged to acquire any greater interest in that land.
- 9.10 Paragraph (4) and Schedule 9 impose modifications to the compulsory purchase and compensation provisions under general legislation, as updated by the Housing and Planning Act 2016. They do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictions in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired), and is commonplace in Transport

and Works Act Orders and other compulsory purchase orders made by local authorities. For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.

- 9.11 General model provision paragraph (4) has not been included as equivalent provision has instead been made in article 37 (Extinguishment and suspension of private rights).
- 9.12 Paragraphs (5) and (6) provide that National Grid, with the consent of the Secretary of State, may transfer to statutory undertakers its power to acquire rights or impose restrictions, where the diversion, replacement or protection of apparatus is required on Order land. The benefit of this is that it would avoid possible delay and uncertainty by statutory undertakers being required to exercise their own powers. For them to do so would be unnecessary given that the action taken would be no different than if the powers were created within this Order.
- 9.13 Paragraph (7) is identical to that in the National Grid (Richborough Connection Project) Development Consent Order 2017 and clarifies that the acquisition of rights over, or the imposition of restrictions which affect and interest held by, or on behalf of, the Crown are not authorised by this article.

*Article 24 (Acquisition of subsoil or airspace only)*

- 9.14 This article allows National Grid to acquire land lower than ground level or airspace above ground level, rather than having to acquire all of the land. The article is similar to the general model provision (article 24) except that it has been extended to include airspace as well as subsoil and is identical to the power contained in the National Grid (Hinkley Point C Connection Project) Order 2016 (Article 26) and the National Grid (Richborough Connection Project) Development Consent Order 2017 (Article 26).
- 9.15 The acquisition of interests in or rights over airspace is particularly relevant in the context of overhead electricity lines, and subsoil is, of course, relevant in the context of the proposed underground element of the authorised development.
- 9.16 Article 28 of the National Grid (North London Reinforcement Project) Order 2014 and Article 30 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 contain similar provisions for airspace and subsoil respectively.

*Article 25 (Acquisition of land limited to subsoil lying more than 9 metres beneath surface)*

- 9.17 Article 25 is based on article 25 of the general model provisions and follows article 31 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 with two exceptions. Firstly, the draft article extends the power to include acquisition of the rights as is incidental to or required to facilitate the authorised development. Secondly, subsoil for the purpose of this article means subsoil and any other rock or matter lying more than 9 metres below the surface of the land.
- 9.18 The article would authorise the undertaker to compulsorily acquire so much of, or such rights in, the subsoil lying more than 9 metres below the surface of land listed in schedule 10 instead of acquiring the whole (albeit in some places, as identified on the Land Plans, surface rights may also be required). This is relevant in respect of the main tunnel between the two tunnel head houses, where it is proposed to seek only a subsoil stratum. National Grid considers a consistent protective zone all around the tunnel to be necessary to accommodate rock bolts and grouting so that none of the construction works go outside of the LOD. The land required will be no greater than a 25m by 25m cross section, detailed further in the Statement of Reasons. This is considered to be proportionate to the nature and scale of the main tunnel once constructed. The Housing and Planning Act 2016 authorises a compulsory purchase order to exclude land more than 9 metres below the surface and, therefore, National Grid considers 9 metres to be an appropriate depth for the purposes of this Order.
- 9.19 Further, the article confirms that in taking such a subsoil interest, the undertaker would not be required to acquire an interest in any remaining part of that land. This is required because otherwise the undertaker would be obliged to take the entire interest in the land required which would go beyond what is necessary for the purposes of the authorised development.
- 9.20 National Grid consider this article to be necessary to enable the development of the authorised development because, unlike the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017, the tunnelling works comprised in the authorised development require National Grid to differentiate the deep subsoil from other land in which it requires rights.

*Article 26 (Temporary use of land by National Grid)*

- 9.21 This article which applies only to National Grid, follows the principle of general model provision 28 and allows the land set out in Schedule 11 to be occupied temporarily by National Grid in connection with the carrying out of the authorised development (article 26(1)(a)(i)).

- 9.22 A modification to article 28 of the general model provisions has been made to allow National Grid also to take temporary possession of any other Order land which may be subject to compulsory acquisition of land or rights but in respect of which National Grid has not yet served a notice of entry or made a general vesting declaration (article 26(1)(a)(ii)).
- 9.23 This provision has appeared in Orders made under the Transport and Works Act 1992<sup>a</sup> and the wording of this article is very similar to that contained in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 29). It allows National Grid to occupy land to construct the authorised development without having to permanently acquire the land, or a right over the land. Once constructed, that land, or rights in the land, may be compulsorily acquired. This means that National Grid will be able to compulsorily acquire rights to retain, operate and maintain the authorised development over an area of land which matches the final footprint of the authorised development. This provides flexibility to National Grid and, for the landowner, minimises the area of land required for the compulsory acquisition of land or rights, which has a lesser impact on the landowner. There is a consequential amendment to paragraph (3) to refer to the two different categories of land mentioned in paragraphs (1)(a)(i) and (1)(a)(ii).
- 9.24 Paragraph 1(b) has extended the model provision to allow for National Grid to remove equipment or any other thing from the land. This goes beyond the wording of the National Grid (Hinkley Point C Connection Project) Order 2016, but is required to give National Grid appropriate flexibility in its temporary use of the land and is considered to be proportionate in the context of the authorised development.
- 9.25 Paragraph (1)(d) has been also been added to allow specified works to be constructed on the land listed in Schedule 11.
- 9.26 Paragraph (2) requires National Grid to give landowners 14 days' notice before entering on and taking temporary possession of land. This timeframe is considered to be necessary, appropriate and proportionate given the need for National Grid to construct the authorised development to meet the connection date for Wylfa Newydd Nuclear Power Station.
- 9.27 Paragraph (4) provides that National Grid must provide written notice to the landowner of the date of completion of the work for which temporary possession was taken within 28 days of completion of the works.

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<sup>a</sup> For example, the Nottingham Express Transit System Order 2009 (S.I. 2009/1300) (article 36(1)(a)(ii)).

- 9.28 Paragraph (5) provides that, unless otherwise agreed with the landowners, before giving up temporary possession of land listed in Schedule 11 National Grid must remove all temporary works and restore the land save for the exceptions listed in sub-paragraphs (a) to (h) which has been amended to allow works of mitigation and other works (such as the pylons) to be constructed and left on the land, without a requirement for these to be removed. This would apply, for example, where mitigation is provided but National Grid does not need to retain a permanent interest in the land and has precedent in the Network Rail (Nuneaton North Chord) Order 2010<sup>a</sup>. The provision would allow National Grid to leave, in place, foundations (more than 1.5 metres below ground) for the pylons which have been removed. This is because the removal of the foundations below 1.5 metres is judged, on balance, to be unnecessary when comparing the benefit of such removal as against the potential effects. In particular, it is considered a sufficient depth to ensure the safe future use of the land in question.
- 9.29 Paragraph (6) is similar to paragraph (5) but relates to land not listed in the Schedule, and provides that where temporary possession has been taken over land which may be subject to compulsory acquisition, but in respect of which National Grid has not yet served a notice of entry or made a general vesting declaration, National Grid shall either acquire the land, or right, over the land or remove the temporary works. Paragraph (6) mirrors Article 29(6) of the National Grid (Hinkley Point C Connection Project) Order 2016 except that the Order incorporates three additional exclusions to the requirement to remove the temporary works. Under these exclusions, National Grid is not required to remove any ground-strengthening works, nor to remove or reposition any apparatus belonging to statutory undertakers, nor to remove any drainage works. This is to ensure that in returning the land temporarily occupied, there is not a requirement to ‘undo’ works which have been carried out to facilitate the authorised development. For the same reasons as in paragraph (5), this provision allows National Grid to leave in place foundations (more than 1.5 metres below ground) for the pylons which have been removed. The first two of these exclusions are contained in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (Article 35).
- 9.30 Paragraph (9) amends the general model provisions to make clear that compensation payable under this article is compensation payable for injurious affection which would normally arise under section 10 of the Compulsory Purchase Act 1965 but which, by virtue of section 125(3)(b) of the Act is payable under section 152 of the Act instead.
- 9.31 Under paragraph (10), National Grid is not required to acquire the land listed in Schedule 11 or any interests in that land, but this provision does not prevent rights in or over land, subsoil or airspace over land

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<sup>a</sup> S.I. 2010/1721

from being acquired. The model provision has been amended to also allow restrictions to be imposed on the Schedule 11 land and for airspace to be acquired.

- 9.32 Paragraph (12) makes clear that the power in this article can be exercised on more than one occasion. This change is intended to clarify the intention behind the model provision rather than to expand its scope.

*Article 27 (Temporary use of land by SP Manweb)*

- 9.33 This article is similar to article 26 (Temporary use of land by National Grid) and provides that SP Manweb may, in connection with the carrying out of the SP Manweb Works (only) take temporary possession of the Order land specified in Schedule 11. The extent of this provision is more limited in scope than article 26 as it need only relate to the SP Manweb Works.
- 9.34 The ability to leave those works listed in article 26(5)(e)-(h) in situ has not been replicated in the SP Manweb power as these are not works forming part of the SP Manweb Works.
- 9.35 Article 27(12) includes additional wording to ensure that National Grid is not prevented from taking temporary possession more than once in relation to any land specified in article 26(1)(a). This is included to clarify that National Grid can take temporary possession of land of which SP Manweb has previously taken temporary possession and is necessary to ensure the delivery of the project.

*Article 28 (Temporary use of land for maintaining authorised development)*

- 9.36 This article provides for entry upon, and the taking temporary possession of, land within the Order limits (except for houses, gardens and any other building for the time being occupied) reasonably required to maintain the authorised development. At least 28 days' notice must be given (save in emergencies), and compensation must be paid for any loss or damage.
- 9.37 The article follows the general model provisions save that paragraph (1)(c) extends the model provisions to include a right to enter on to the land for the purpose of gaining access to maintain the authorised development (which compliments the maintenance powers set out in paragraph (1)(a)). In addition, a provision removing the need for 28 days' notice in emergency situations has been added at paragraph (11), which mirrors wording in the River Humber Gas Pipeline Replacement Order 2016<sup>a</sup>.

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<sup>a</sup> S.I. 2016/853.

- 9.38 Article 28(12) differentiates between a 'maintenance period' for maintaining the authorised development (five years beginning with the date that part of the authorised development is brought into operational use) and a 'maintenance period' for replacement or landscape planting (five year beginning with the date on which that part of the replacement or landscape planting is first completed).
- 9.39 Similar wording appears in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 31), with the main differences being that article 28(11) includes the emergency notice requirements explained above.
- 9.40 This provision is necessary to ensure National Grid can access the authorised development for the purpose of maintenance, which National Grid considers to be necessary and proportionate.

*Article 29 (Use of subsoil under or airspace over streets)*

- 9.41 This article, which closely mirrors article 27 of the general model provisions (save for the inclusion of reference to purposes ancillary to the authorised development), provides that National Grid may use streets within the Order limits for the authorised development without being required to acquire any part of the street or any easement or right in the street. Provision is made for the payment of compensation to persons who suffer losses as a result of the exercise of this power.
- 9.42 This type of provision also appears in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 48).

*Compensation*

*Article 30 (Disregard of certain interests and improvements)*

- 9.43 This article is not contained in the general model provisions but follows article 26 of the TWA Order Model Provisions and replicates article 37 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- 9.44 It provides for disregarding certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was not reasonably necessary and was designed with a view to obtaining compensation or increased compensation.
- 9.45 It complies with section 126 (compensation for compulsory acquisition) of the Act. This is because it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation.

9.46 The wording of this article mirrors much of the wording of section 4 (assessment of compensation) of the Acquisition of Land Act 1981 (the “1981 Act”). It is necessary to specifically apply the effect of section 4 to the draft Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions (Section 1 (*Application of Act*)) and neither the Act nor the general model provisions apply Section 1 of the 1981 Act to the draft Order. Section 120(3) and 120(5)(a) and item 36 of Part 1 of Schedule 5 allow the application in an Order of statutory provisions which relate to the payment of compensation.

*Article 31 (Set-off for enhancement in value of retained land)*

9.47 This article is not contained in the DCO Model Provisions but follows article 27 of the TWA Order Model Provisions and replicates article 38 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

9.48 It provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Upper Tribunal shall set off against the value of the land, any increase in value of any contiguous or adjacent land belonging to that person, arising out of construction of the authorised development.

9.49 In assessing the compensation payable to any person in respect of the acquisition of new rights over land, the Upper Tribunal shall set off against the value of the land, any increase in the value of land over which new rights are acquired and any increase in the value of contiguous or adjacent land belonging to that person, arising as a result of the authorised development.

9.50 It complies with Section 126(2) of the Act. This is because it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation.

9.51 The principle in this article is established in section 7 of the Land Compensation Act 1961 (*effect of certain actual or prospective development of adjacent land in same ownership*), which needs to be applied.

9.52 Sections 120(3) and 5(a) and item 36 of Part 1 of Schedule 5 to the 2008 Act allow the application in an Order of statutory provisions which relate to the payment of compensation.

*Supplementary*

*Article 32 (Compulsory acquisition of land - incorporation of the mineral code)*

9.53 This article is based on the general model provisions (and contains minor additions, as were contained in the draft National Grid Yorkshire and Humber CCS Cross Country Pipeline Order (article 39)).

- 9.54 It incorporates both Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981 (with modifications) rather than just Part 2. Part 3 provides the procedure for the owner wishing to work the mines or minerals. By incorporating the two parts of the named Schedule, this article exempts existing rights in minerals from the scope of compulsory acquisition and deals with the situation where the owner of mines or minerals wishes to work them. This is necessary given the nature of the underground part of the authorised development.
- 9.55 Modifications to Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981, which were included in the draft Yorkshire and Humber CCS Cross Country Pipeline Order (article 39) are to substitute the words “undertaking” and “compulsory purchase order” for “authorised development” and “this Order”, respectively.

*Article 33 (Time limit for exercise of authority to acquire land compulsorily)*

- 9.56 This article gives National Grid eight years to issue ‘notices to treat’ or a ‘general vesting declaration’ to acquire the land that is subject to the power of compulsory purchase. These are the two main procedural methods by which the process of acquiring land is undertaken should this Order be made. The time period has been extended from the five years which is given in the general model provisions (article 20).
- 9.57 This extension is necessary as it may not be possible to exercise the powers of compulsory purchase within five years of the DCO being made. In part this reflects the ‘relationship’ between the construction/extension of the nuclear generating power station at Wylfa and the current application which will authorise the necessary development to provide sufficient transmission capacity to enable the connection of additional electricity generation to the national grid. As currently contracted, the first reactor at Wylfa Newydd is due to come online in 2024, with the second the year after. However there are many facets of these arrangements which can alter and hence National Grid is of the view that a period of 8 years is proportionate and appropriate in the circumstances.
- 9.58 Sections 154(3) and (4) of the Act and regulation 3 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010<sup>a</sup> allow the Order to prescribe a period longer than five years for the exercise of such powers.
- 9.59 Article 33 is very similar to the provisions of article 21 of the National Grid (Hinkley Point C Connection Project) Order 2016, which in that case makes the time limit for issuing notices to treat or general vesting declaration 24 January 2024 (i.e. 8 years).

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<sup>a</sup> S.I. 2010/105.

- 9.60 In the circumstances, it is believed that, for the reasons stated above, it is proportionate and sensible for the period for exercise of powers of compulsory acquisition, to be a period of 8 years.
- 9.61 The time limit in this article is to be extended by one year, in the event that the Order is subject to a legal challenge. This is explained further in paragraph 10.40 below.

*Article 34 (Acquisition of part of certain properties)*

- 9.62 This article, which follows general model provision 26, enables acquisition of a part, rather than the whole of, properties subject to compulsory acquisition. It contains a procedure enabling the relevant owner in certain circumstances to require the whole of the land to be taken, with disputes being determined by the Land Chamber of the Upper Tribunal. The article applies as a substitute for section 8(1) and Schedule 2A of the Compulsory Purchase Act 1965.

*Article 35 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)*

- 9.63 This article provides for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981 which contains vesting procedures for land subject to compulsory purchase.
- 9.64 Precedent wording appeared in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 25) although, since then, parts of the Housing and Planning Act 2016 have come into force, hence we have updated this article accordingly. The 2016 Act repealed sections 3 and 5(1) of the 1981 Act so that a preliminary notice of intention is no longer required before a general vesting declaration may be executed. Instead, a prescribed statement about the effects of Parts 2 and 3 of the 1981 Act must be included in the confirmation notice under section 15 of the 1981 Act, together with an invitation for a person to provide information where that person would be entitled to claim compensation if a general vesting declaration were made. A similar provision is included at article 22 of the draft Eggborough CCGT (Generating Station) Order.
- 9.65 It is important to provide clarity within the Order as to the procedures in place in respect of the authorised development.

*Article 36 (Application of Part 1 of the 1965 Act)*

- 9.66 This article provides for the application, with modifications, of Part 1 of the Compulsory Purchase 1965 Act.
- 9.67 The modifications are necessary to ensure that the 1965 Act is consistent with the terminology contained in the draft Order and the challenge procedures to which the draft Order is subject.

- 9.68 Article 36(3) replaces the time limit for exercising compulsory purchase powers in the 1965 Act with the powers contained in article 33 of the draft Order.
- 9.69 Article 36(4) ensures that references to entering on and taking temporary possession of land under the new Schedule 2A do not include entering on and taking temporary possession under the draft Order.
- 9.70 Whilst this provision is not included in the recent National Grid (Richborough Connection Project) Development Consent Order 2017, National Grid considers it to be appropriate for inclusion in this Order because National Grid is seeking powers to acquire land in addition to rights, whilst Richborough only sought powers to acquire rights. Except for slight departures at paragraph 2(a) and paragraph (4) of the Order, this provision closely follows the Wrexham Gas Fired Generating Station Order 2017 and the draft Eggborough CCGT (Generating Station) Order.

*Article 37 (Extinguishment and suspension of private rights)*

- 9.71 This article has expanded upon the general model provision so as to apply to private rights generally and not just to rights of way.
- 9.72 It provides for the extinguishment or suspension of private rights over land subject to compulsory acquisition and the extinguishment of private rights over land subject to the compulsory acquisition of rights (in so far as the continuance of the existing right would be inconsistent with the right acquired or a breach of a restriction as to the user of land arising by virtue of contract) from the date of the acquisition of the land or rights, or the date of entry, whichever is earliest.
- 9.73 Private rights on land already owned by National Grid within Order limits would be extinguished on the commencement of any activity authorised by the Order which interferes with or breaches such rights. This draws on the approach taken in article 17 of the Rookery South (Resource Recovery Facility) Order 2011<sup>a</sup>. It allows National Grid to “clear title” on land it already owns.
- 9.74 All private rights over land that is temporarily occupied by National Grid are suspended and unenforceable for the duration of the occupation (save as provided for in article 39 below), in so far as their continuation would be inconsistent with the exercise of the powers under the Order.
- 9.75 The article makes provision in relation to the payment of compensation. There is a saving for statutory undertakers. Private rights are defined in article 37(9). This builds on the definition of rights given in article 21(2) of the general model provisions and incorporates

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<sup>a</sup> S.I. 2013/680.

the wider definition used in article 18(3) of the Rookery South (Resource Recovery Facility) Order 2011.

- 9.76 The wording of this article is substantially similar to the wording contained at article 23 of the National Grid (Hinkley Point C Connection Project) Order 2016, except that paragraph (1) refers to suspension, (4) also includes wording to make it clear that the suspension is only insofar as the rights are inconsistent with order provisions being exercised, and (9) includes restrictions as to the user of land arising by the virtue of a contract.
- 9.77 The rationale behind the inclusion of this article is the need for National Grid to be able to construct the authorised development in a timely fashion, without interference from the exercise of any private rights which conflict with the needs of the project delivery.

*Article 38 (Power to override easements and other rights)*

- 9.78 This does not derive from the general model provisions, but is based on article 32 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, with minor changes at paragraph (3) to more closely reflect the type of interests affecting land that National Grid expects to come across. It draws on the powers in section 203 of the 2016 Act (which Act repealed and replaced section 237 of the Town and Country Planning Act 1990 – see section 206 and schedule 19 paragraph 9 of the 2016 Act).
- 9.79 This provision also avoids the difficulty involved in applying article 18 (compulsory acquisition of land) of the general model provisions, in that extinguishment of rights is not automatic on acquisition and only those rights which obstruct the authorised development will be overridden. That avoids the extinguishment of rights, the continued use of which can be accommodated by the authorised development and which constitutes a potential saving in compensation.
- 9.80 Sections 120(3) and (4) and item 2 of Part 1 of Schedule 5 to the Act confirm that the Order may make such provision relating to the compulsory suspension, extinguishment or interference with interests in or rights over land.
- 9.81 Moreover, this article is supplementary (under section 120(5)(d) of the Act) to articles 22 (compulsory acquisition of land) and 23 (compulsory acquisition of rights) of the Order and is necessary and expedient to give full effect to the development consent in article 3 of the Order (as permitted by section 120(5)(c) of the Act).
- 9.82 Paragraphs (1)(a) and (b) are based on section 203(1) of the 2016 Act, with the exception that the interests and rights referred to in the Order also include trusts, incidents and wayleaves. These additional rights

are included to more closely reflect the types of interests and rights that National Grid may come across on a linear scheme of this nature.

- 9.83 The definition of “authorised activity” in paragraph (2) reflects in part the list of activities in section 203(1) of the 2016 Act (see previously section 237(1A) of the 1990 Act).
- 9.84 Paragraph (c) of article 38(2) clarifies that “use of any land” includes the “temporary use of land”. This gives full effect to the powers under articles 26 (temporary use of land by National Grid, 27 (temporary use of land by SP Manweb)) and 28 (temporary use of land for maintaining authorised development) of the Order, which ought to be capable of use without constraint by the interests etc, rights or restrictions described in paragraph (1) of article 38.
- 9.85 Article 38(3) is based on the definition of “relevant right or interest” in section 205(1) of the 2016 Act (see previously section 237(2) of the 1990 Act). It is similar to article 32(3) of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, except that it also applies to trusts, incidents and wayleaves and can include any land forming part of a common, open space or fuel or field garden allotments. This addition more closely reflects the types of rights, interest and land that National Grid may come across along the linear scheme.
- 9.86 No drafting is included to reflect section 203(9) of the 2016 Act, because it may be necessary to alter the apparatus of statutory undertakers using the powers of the Order and the relationship between the undertaker and statutory undertakers is provided for in the protective provisions included at Schedule 15 (protective provisions) to the Order.
- 9.87 Article 38(4) is included for clarity on procedure and timing for the assessment of compensation by reference to section 204(3) of the 2016 Act.
- 9.88 Article 38(5) makes provision for compensation and is based on section 204(3) of the 2016 Act (see previously section 237(4) of the 1990 Act). It confirms that if the undertaker has acquired land, and compensation is payable by a person deriving title from that undertaker but the person does not pay it, then the undertaker assumes that liability.
- 9.89 Section 204(4) of the 2016 Act defines the specified or qualifying authority against whom the liability to pay compensation can be enforced as the authority in which the land to which the compensation relates was vested, or by which the land was acquired or appropriated. The undertaker cannot “appropriate” land in this way because it is not a local authority. Accordingly, no reference in this paragraph is made to “appropriation”, thus modifying the application of the compensation

provision in section 203(3) to the extent necessary to apply it to the order, as permitted under section 125(6) of the Act.

*Article 39 (Statutory authority to override easements and other rights)*

- 9.90 For the avoidance of doubt, this article provides that, by virtue of section 158 of the Act, in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, National Grid may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural rights of support, or breach any restriction as to user of land arising by virtue of contract.
- 9.91 It also provides that, by virtue of section 152 of the Act, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.
- 9.92 This is not a model provision, but is added to clarify the position with regard to rights burdening land which is required for the authorised development. Similar wording appears in the Hinkley Point C (Nuclear Generating Station) Order 2013 (Article 25). The only deviation from this wording is at article 39(3) which applies the article to any trust, incident or wayleave, and includes any land forming part of a common, open space or fuel or field garden allotment, together with any restrictions as to the user of land arising by virtue of a contract. This is necessary and appropriate to address the types of interest/land that National Grid may encounter on a linear scheme of this nature.

*Article 40 (Extinguishment of private rights and restrictive covenants relating to apparatus belonging to National Grid or SP Manweb removed from land subject to temporary possession)*

- 9.93 All private rights over land that is temporarily occupied by National Grid or SP Manweb are suspended and unenforceable for the duration of the occupation insofar as inconsistent with the exercise of the Order powers. Rights in relation to apparatus which is removed from the land are extinguished when National Grid or SP Manweb no longer remains in lawful possession of the land. This article is not a model provision, but is identical to article 24 of the National Grid (Hinkley Point C Connection Project) Order 2016.
- 9.94 Paragraph (3) provides that the extinguishment of any right does not give rise to a cause of action relating to any foundations save for those which lie less than 1.5 metres underground. Whilst the intention is to remove apparatus from the land, the foundations (below 1.5 metres underground) will be left in situ and this paragraph is intended to confirm that leaving the foundations in the ground would not result in a cause of action of trespass in relation to the foundations once the right to leave the foundations in the ground is extinguished.

- 9.95 A new paragraph (4) is included, in line with the approach in the National Grid (Richborough Connection Project) Development Consent Order 2017, to explicitly give effect to Schedule 12 (extinguishment of private rights and restrictive covenants relating to apparatus belonging to National Grid or SP Manweb removed from land subject to temporary possession).

*Article 41 (Crown Rights)*

- 9.96 This article provides that the Order does not prejudice any estate, right, power, privilege, authority or exemption of the Crown and does not authorise the undertaker to take or interfere with any land or rights belonging to the Crown or a government department without written consent. Consent may be given unconditionally or subject to conditions.
- 9.97 This article is not a model provision, but an identical provision is included at article 32 of the National Grid (Hinkley Point C Connection Project) Order 2016 and is considered appropriate that this is article be included for clarity.

*Article 42 (Special Category Land)*

- 9.98 Article 42 requires that rights and encumbrances over any special category land (i.e. land forming part of a common, open space, or fuel or field allotment) must be discharged insofar as they would be inconsistent with the exercise of the Order rights. A similar provision is contained in the National Grid (Richborough Connection Project) Development Consent Order 2017 at article 31.

*Article 43 (Statutory undertakers)*

- 9.99 This article is based on article 31 of the general model provisions. It authorises the undertaker (1) to compulsorily acquire land belonging to statutory undertakers described in the book of reference, (2) to extinguish rights of statutory undertakers, as well as the removal or repositioning of apparatus belonging to statutory undertakers, and (3) acquire compulsorily new rights over land belonging to statutory undertakers described in the book of reference.
- 9.100 It departs from the general model provisions in paragraphs (2) to (5), which all relate to either the power in paragraph (1)(b) (extinguishment of rights or removal or repositioning of apparatus belonging to statutory undertakers) or other apparatus diversions. Paragraphs (3) and (4) allow for the notification process set out in the Town and Country Planning Act 1990 (sections 271-274) to apply in other cases. Paragraph (2) caveats (3) and (4).
- 9.101 The effect would be such that where the undertaker proposes to extinguish the rights of statutory undertakers, or to remove or reposition their apparatus, and those statutory undertakers do not fall

within article 43(1)(b) (i.e. statutory undertakers' apparatus within the Order limits) then those statutory undertakers would be subject to the provisions of the Town and Country Planning Act 1990, which make provision about the extinguishment of the statutory undertakers' rights and include provisions relating to compensation.

9.102 This article is very similar to article 42 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2016, the only substantive difference being that the Order does not refer here to a schedule relating to the protection of statutory undertakers. Article 50 gives effect to Schedule 15 (protective provisions) separately (as explained below).

*Article 44 (Recovery of costs of new connections)*

9.103 This article is identical to article 34 of the National Grid (Hinkley Point C Connection Project) Order 2016.

9.104 It provides for compensation to be paid to owners or occupiers of property whose supply is affected by the removal of apparatus in accordance with article 43 (statutory undertakers).

## **9 Part 6 – Miscellaneous and general**

*Article 45 (Application of landlord and tenant law)*

10.1 This article governs the leasing of land by National Grid to any other person. It allows the terms of the lease to override any statutory provisions relating to landlord and tenant law. The article is identical to the general model provisions article except for some very slight linguistic modernisation. This is also identical to article 36 of the National Grid (Hinkley Point C Connection Project) Order 2016 and is included for the sake of clarity and consistent application to any such leases along the route.

*Article 46 (Defence to proceedings in respect of statutory nuisance)*

10.2 Section 158 of the Act confers statutory authority for the purposes of a defence in statutory nuisance generally. This article amends the terms of the defence in the case of noise nuisance (other types of nuisance continue to have the general defence afforded by section 158). The defence is available if the noise relates to (1) the construction or maintenance of the project and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974<sup>a</sup>, (2) is a consequence of construction or maintenance and cannot reasonably be avoided, or (3) is a consequence of complying with the Order and cannot reasonably be avoided. The defence is also

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<sup>a</sup> c.40.

available if the nuisance is attributable to the use of the project and is in accordance with the certified Noise and Vibration Management Plan or cannot reasonably be avoided.

- 10.3 This article is based on article 7 of the general model provisions, with the removal of references to section 65 of the Control of Pollution Act 1974, following its repeal. All of the wording of article 45 appears in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 38), except for paragraph (1)(a)(iii), which is taken from article 7(1)(b) of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. This provision is appropriate for inclusion in the Order to ensure that nuisance claims are considered in the context of the wider benefits of the authorised development.

#### *Article 47 (Traffic regulation)*

- 10.4 This article allows National Grid, with the consent of the traffic authority to regulate traffic on the roads and to the extent specified in Parts 1 to 7 of Schedule 13 or to any other extent that is expedient or necessary for the construction of the authorised development. The article is not in the general model provisions but is common in orders granting permission for infrastructure projects<sup>a</sup>. This article has been taken from the National Grid (Hinkley Point C Connection Project) Order 2016 (article 40) and has been amended to allow the regulation of traffic for purposes ancillary to the authorised development. It is necessary for the purpose of the construction of the authorised development in a manner which is expedient and safe for both contractors and the public.
- 10.5 As explained earlier, this article contains a provision such that consent from the traffic authority is deemed to have been given if the authority fails to notify National Grid of its decision within 28 days of receipt of the application.

#### *Article 48 (Felling or lopping)*

- 10.6 This article allows any tree, shrub, hedgerow or important hedgerow that is near the authorised development to be felled, lopped or coppiced, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the project or endanger anyone constructing, maintaining or operating it. This is necessary so that the authorised development can be brought forward expediently and safely and can be maintained in the same manner.
- 10.7 Compensation is payable for any loss or damage caused.

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<sup>a</sup> See article 37 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011. See also article 38 of the Network Rail (Norton Bridge Area Improvements) Order 2014

- 10.8 The article is based on the general model provisions article, but extends the power to include coppicing, and hedgerows and important hedgerows, and deletes reference to 'passengers' in article 48(1)(b) as it is not relevant to the development authorised by the Order.
- 10.9 Article 48(4)-(6) extend the provision beyond the general model provision. Article 48(4), mirrors article 41(5) of the National Grid (Hinkley Point C Connection Project) Order 2016, and requires highway authority consent before felling or lopping a tree within or overhanging the public highway.
- 10.10 Articles 48(6) and (7) remove any obligation upon to secure any consent to remove hedgerows under the Hedgerows Regulations 1997, and are based on article 31(5) and (6) of the North Wales Wind Farms Connection Order 2016<sup>a</sup>.

*Article 49 (Trees subject to tree preservation order)*

- 10.11 This article allows National Grid to fell or lop trees listed in Schedule 14 (Trees subject to tree preservation order). This article is based on article 40 of the general model provisions, with minor changes to article 49(1)(b) to replace "using the authorised project" with "constructing, maintaining or operating the authorised development", because it is not possible for a person to use overhead electric lines. Some other minor linguistic updates are also included.
- 10.12 This article is necessary to ensure that National Grid can comply with its obligations under the Electricity Safety, Quality and Continuity Regulations 2002.

*Article 50 (Protection of interests)*

- 10.13 This article provides that Schedule 15 (protective provisions) has effect. The protective provisions seek to protect statutory undertakers whose assets may be affected by the authorised development.

*Article 51 (Procedure regarding certain approvals etc.)*

- 10.14 This article contains additional provisions in respect of any approval, consent or agreement which is required to be given under the Order. It provides that any such approval, consent or agreement given by the relevant body must be given in writing and must not be unreasonably withheld or delayed.
- 10.15 It also provides that the procedures set out in Schedule 4 (discharge of requirements) apply to any consent, agreement or refusal which needs to be obtained under the Requirements set out in Schedule 3 (requirements) and any other consents required under the Order. The

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<sup>a</sup> SI 2016/818

article clarifies the procedure which applies in respect of these additional consents.

- 10.16 Schedule 4 (discharge of requirements) sets out the appeal process in relation to such matters and where an appeal can be made to the Secretary of State to discharge matters including the requirements in Schedule 3 (requirements) and other consents or approvals required under the Order.
- 10.17 This article and associated Schedule 4 (discharge of requirements) reflect the approach taken in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 46), which in turn reflects the approach adopted in the (North London Reinforcement Project) Order 2014 (article 45 and Schedule 3) and the Hinkley Point C (Nuclear Generating Station) Order 2013. The only difference between the wording in the National Grid (Hinkley Point C Connection Project) Order 2016 wording and the wording in the Order is that the Order expressly states that any consent, agreement or approval given under this article must not be unreasonably withheld or delayed.
- 10.18 This appeal process is considered proportionate and justified in light of the size and scale of the authorised development proposed to ensure the delivery of the authorised development in a timely fashion.

*Article 52 (Safeguarding)*

- 10.19 This article is not a model provision and is based on parts of article 52 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. Paragraphs (1) and (3) - (6) of the Order broadly mirror paragraphs (1), and (5) – (8) of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. Paragraph (5) is amended to ensure that matters raised in representations received in accordance with this article are addressed. The interpretation paragraph has been tailored to the needs of this article.
- 10.20 The principle of this provision is to safeguard the tunnel at a depth of 10 metres or more, and other infrastructure in the construction and operational phases, from adverse effects of development in the vicinity of the authorised development and to maintain the operational integrity of the authorised development.
- 10.21 There is no established statutory mechanism for this which would represent a sufficient safeguard to the operational integrity of the tunnel and associated infrastructure.
- 10.22 The vires for the inclusion of this provision are sections 120(3) and (5) of the Act. The safeguarding provision is a “provision relating to, or to matters ancillary to, the development for which consent is granted” by this Order (see s.120(3)); and it is also “necessary or expedient for giving full effect to” the other provisions of this Order (see s.120(5)(c)).

- 10.23 The rationale for this provision - which explains the application of the vires specified above - is that the authorisation of works by this Order would be nugatory if the safety of the works could be jeopardised by other works undertaken in close proximity. In particular, the safety of the works authorised by this Order could be at risk from as yet unknown future activities by third parties.
- 10.24 The extent of this provision falls short, however, of preventing the grant of planning permission: the right conferred is a right to be consulted and for that response to be taken into account. The relevant local planning authority will then be able to consider engineering evidence as to the likely effect of any new proposed works on the safety of the tunnel and all other parts of the authorised development within the Order limits; and to consider what steps if any should be taken to ensure that the work sought under the new planning permission does not endanger the tunnel.
- 10.25 The principal precedents for this provision are articles 14 and 15 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012<sup>a</sup> (the “2012 Order”), which establish a precedent for requiring local planning authorities to consult before granting planning permission applications. These precedents demonstrate that there is no insuperable administrative difficulty for local planning authorities in operating a provision of this kind. Article 14 of the 2012 Order is also the origin of Safeguarding Directions, with which local planning authorities are familiar and which serve a similar purpose to this provision.
- 10.26 Paragraph (2) of article 52 sets out the mechanisms applicable for the authorised development, by which the affected area can be described. The development to which this article of the Order applies is not as extensive as the development to which the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 applied, so the scope of paragraph (2) of the Order has been scaled back to reflect the needs of the authorised development.
- 10.27 The supplementary provisions of paragraph (3) are drawn from article 14 of the 2012 Order discussed above.
- 10.28 In order to enable local planning authorities to comply with this provision without an undue administrative burden, and in order to ensure the provision’s effectiveness, paragraph (6) makes the requirement to consult a local land charge. The result is that in the ordinary course of the early stages of handling an application for

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<sup>a</sup> S.I. 2012/801; see, in particular, article 14(1): “Before granting planning permission for development which, in their opinion, falls within a category set out in the Table in Schedule 4, a local planning authority must consult the authority, body or person mentioned in relation to that category ...”.

planning permission the existence of this provision will become readily apparent to all concerned. (It is standard practice for Safeguarding Directions to be revealed in response to Optional Enquiries sent with requisitions for searches of the local land charges register<sup>a</sup>; the approach taken in this Order takes advantage of the Order's status as a statutory provision for the purpose of section 1(1)(e) of the Local Land Charges Act 1975 (see the definition in section 14(1)).)

*Article 53 (No double recovery)*

10.29 This is not a model provision and is based on article 44 of the Transport and Works (Model Clauses for Railways and Tramways) Order 2006. This article has precedent in numerous Transport and Works Act Orders and appears in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 48) and the more recent National Grid (Richborough Connection Project) Development Consent Order (albeit with some very minor linguistic differences).

10.30 It provides that compensation is not payable both under this Order and any other enactment, contract or other rule of law. It follows the well-established principle of equivalence that a claimant is compensated for no more and no less than their loss.

*Article 54 (Application, disapplication and modification of legislative provisions)*

10.31 This article is similar in effect to article 6 of the general model provisions, which deals with the application and modification of legislative provisions and the inclusion of this provision is justified by the need to prevent conflicts in existing legislative provisions from hindering the delivery of the scheme. A similar provision appears in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 56).

10.32 Section 120(5)(a) of the Act provides that an Order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.

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<sup>a</sup> See, for example, in relation to Crossrail in England: "In accordance with article 25(4)(b) of the GDPO, particulars of the Directions must be entered in Part II of the Register of Applications, in respect of any application for planning permission to which they apply. The Department is also of the view that the safeguarding provisions should be revealed in response to Optional Enquiries sent with requisitions for searches of the local land charges register in relation to properties within the zone of consultation and within 200 metres of the areas of surface interest shown shaded on the plans attached to the Directions." - [http://www.crossrail.co.uk/assets/library/document/4/original/4\\_safeguarding\\_direction\\_s\\_schedule\\_guidance\\_and\\_explanatory\\_notes.pdf](http://www.crossrail.co.uk/assets/library/document/4/original/4_safeguarding_direction_s_schedule_guidance_and_explanatory_notes.pdf) .

*Article 55 (Amendment of local legislation)*

- 10.33 This article is similar in effect to article 6 of the general model provisions in that it seeks to exclude local legislation and byelaws listed in Schedule 18, and other legislation of local application, further to section 120(5) of the Act. There is precedent for the principle in the draft Thames Water Utilities Limited (Thames Tideway Tunnel) Development Consent Order (article 57), the National Grid (Hinkley Point C Connection Project) Order 2016 (article 47) and the National Grid (Richborough Connection Project) Development Consent Order 2017 (article 46).
- 10.34 The intent is to identify local legislation – in particular legislation relating to infrastructure (railways, canals, ports as well as local drainage) - which may be inconsistent with the exercise of powers of the DCO.
- 10.35 Whilst reasonable attempts have been made to identify all legislation of local application which could affect the authorised development, it is disproportionate and impracticable to ensure that all such legislation has been identified on a linear project of this scale. Therefore, this article is not limited in scope in only seeking to identify legislation of local application, which may prohibit the delivery of this nationally significant infrastructure project, but owing to the nature of the project and the nature of potential local legislation, it also seeks to address any unidentified local legislation. It is, therefore, considered proportionate to exclude such legislation which may serve to impede the delivery of the authorised development.
- 10.36 As a safeguard, if National Grid is notified that anything to be done under the Order would contravene a statutory provision of local application, National Grid has to respond within 14 days setting out whether it agrees that there would be a contravention and the grounds on which it believes the article is excluded and the extent of that exclusion.

*Article 56 (Certification of documents)*

- 10.37 This article requires National Grid to submit the final versions of the plans and documents listed in article 56 for certification to the Secretary of State. The article is based on article 51 of the general model provisions. In adopting the approach of the National Grid (Hinkley Point C Connection Project) Order 2016 (article 44), this article has been amended to refer to the names of the plans and documents that are part of the application, in a similar way to the National Grid (Richborough Connection Project) Development Consent Order 2017.

### *Article 57 (Service of notices)*

10.38 This article governs how any notices that may be served under the Order shall be 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. Although the article is not in the general model provisions it is common to have such an article in an order authorising development such as this and the wording of this article replicates the wording of article 35 of the Network Rail (Nuneaton North Chord) Order 2010 and article 45 of the National Grid (Hinkley Point C Connection Project) Order 2016. The provision is necessary because the service of notice provisions under sections 229 and 230 of the Act would not apply to notices served under a development consent order.

### *Article 58 (Arbitration)*

10.39 This article governs what happens when two parties disagree over the implementation of any provision of the Order. The matter is to be settled by arbitration, and if the parties cannot agree on whom the arbitrator should be, this is decided by the Secretary of State. The article is based on the general model provision with the insertion of the Secretary of State as the appropriate body to reflect the agreed position in recently made Development Consent Orders, such as the National Grid (Hinkley Point C Connection Project) Order 2016.

### *Article 59 (Application of sections 91(3A) and (3B) of the 1990 Act)*

10.40 Under the 1990 Act, sections 91(3A) and (3B) only apply to planning permissions for the development of land in England. This article applies these provisions to the Order as though it were a planning permission for the development of land in England. The effect of this is that if there is a legal challenge to the Order, the time limit in article 33 (time limit for exercise of authority to acquire land compulsorily) and the time within which the authorised development must be commenced (Requirement 2) are extended by one year to account for the delay resulting from the legal challenge.

## **10 Schedules**

11.1 **Schedule 1 (Authorised development)** specifies numbered works comprised in the authorised development for which development consent is sought and other associated development works. The works should be read alongside the works plans.

11.2 The principal permanent works comprising the authorised development have been allocated individual Works Nos. and within each of those principal works, associated development (such as access roads) has been included.

- 11.3 The linear works (Work No. 2-7, 8(g), 9 and 10) are subject to the limits of deviation in Article 5 and are shown on the Works Plans with centre lines and commencement and termination lines to aid the identification of the location of these works.
- 11.4 The non-linear works (Work No. 1, 8 (except 8(g)), 11 and 12) are subject to parameters as shown on the Design Drawings and, the principal elements of those works are shown on the Works Plans (shaded orange).
- 11.5 In Section C, two options are included and are shown on the Works Plans. However, because of the substantial similarities between the two options, Schedule 1 does not need to differentiate between the two (see Work No. 6).
- 11.6 Work No. 4(b) authorises the “removal or partial removal” of the temporary electric line. This is so that foundations need not be removed below 1.5 metres and ensures consistency with the powers in Articles 26 (Temporary use of land by National Grid) and 40 (Extinguishment of private rights and restrictive covenants relating to apparatus belonging to National Grid and SP Manweb removed from land subject to temporary possession).
- 11.7 **Schedule 2 (Plans)** lists the works plans, land plans, access and rights of way plans and other plans submitted with the application and referred to in the Order.
- 11.8 **DCO Schedule 3 (Requirements)** Contains draft requirements corresponding to conditions which, under section 120(2) of the Act, could have been imposed on the grant of planning permission for the authorised development had it not fallen within the ambit of the Act. The requirements have a similar purpose to planning conditions.
- 11.9 **DCO Requirement 1:** Requirement 1 (Interpretation) provides for the interpretation of words and phrases used in this Schedule. Paragraph (2) is very similar to model requirement 36 (Requirement for written approval).
- 11.10 **DCO Requirement 2:** Requirement 2 (Time limits) accords with the model requirement in providing that the authorised development must be commenced within 5 years of the date of the Order.
- 11.11 **DCO Requirement 3:** Requirement 3 (Design and Limits of Deviation) provides that the authorised development shall be carried out in general accordance with the design drawings, so as to allow the necessary but proportionate degree of flexibility in the construction of the important and nationally significant infrastructure project. The exception to this is where any departure from the design drawings gives rise to any materially new or different environmental effects from those assessed in the environmental statement.

- 11.12 The design drawings are a mixture of parameters, indicative detail, and illustrative detail, as appropriate, therefore, the construction can only be in general accordance with the information shown on them. Where those drawings show equipment or features, these are typical examples of each item (i.e. a typical haul road). Strict and literal adherence to indicative sections would limit National Grid's ability to deliver the authorised development within the necessary flexibilities that National Grid is seeking.
- 11.13 **DCO Requirement 4:** Requirement 4 (Tunnel Head House Design) provides that the above ground elements of the authorised development within Work No. 8 (Braint and Ty Fodol Tunnel Head Houses) shall be carried out in general accordance with the key design principles of the Tunnel Head House Design Guide (Document 7.19), unless otherwise agreed with the relevant planning authority. Such an approach accommodates necessary but proportionate flexibility in the construction of these elements. The flexibility to have the relevant planning authority approve a variation to the key design principles is necessary to allow for any departure from the key design principles.
- 11.14 **DCO Requirement 5:** Requirement 5 (Stages of authorised development) provides for the production of a single staging plan for the authorised development before development can commence, and for notice of the commencement and completion of each stage to be given to the relevant planning authority.
- 11.15 **DCO Requirement 6:** Requirement 6 (Construction Environmental Management Plan) requires all construction works to be carried out in accordance with the Construction Environmental Management Plan as certified by the Secretary of State. The Construction Environment Management Plan is associated with the various plans, schemes and strategies listed in requirement 6(2). Where it may apply to their works and only if agreed with the relevant planning authority, sub-paragraph (3) provides for a separate Construction Environment Management Plan to be provided by a third party. This ensures that the third party is not unreasonably required to comply with a CEMP that was prepared by National Grid and which does not work practically for their element of the authorised development. Sub-paragraphs (1) and (4) provide that the Construction Environment Management Plan and associated plans, schemes and strategies must be implemented as approved unless otherwise agreed with the relevant planning authority. The flexibility to deviate from the certified CEMP is both necessary and proportionate to accommodate any required change following certification. This is particularly important given the linear nature of the scheme and the long construction period.
- 11.16 **DCO Requirement 7:** Requirement 7 (Approval and implementation of construction mitigation plans) provides for the submission to, and approval by, the relevant planning authority of appropriate plans, schemes and strategies listed in the requirement with the works to be

carried out in accordance with those approved plans, schemes and strategies.

- 11.17 **DCO Requirement 8:** Requirement 8 (Construction Hours) confirms construction hours during which construction work may be carried out. Core construction hours are included at sub-paragraph (1). Sub-paragraph (2) provides for specific limitation to percussive piling works. Construction hours associated with tunnelling works are defined at sub-paragraph (3). This separates out blasting at tunnel shafts (3a) and surface drilling and curtain grouting (3b) to ensure appropriate and proportionate restrictions are placed on works according to their nature. Sub-paragraph (4) lists a number of activities which are not subject to the core working hours. Sub-paragraph (5) allows for flexibility on non-disruptive start-up and close-down activities outside of core construction hours. A definition of start-up and close down activities is included at DCO Requirement 1. Flexibility to undertake start-up and close-down activities outside of the core construction hours is both necessary and proportionate for the main works to progress on-time, to programme and within defined hours.
- 11.18 **DCO Requirement 9:** Requirement 9 (Mitigation planting scheme) confirms arrangements for necessary planting, including preparation of a planting scheme for each stage of the authorised development unless otherwise agreed with the relevant planning authority. The flexibility to not prepare a planting scheme for a given stage will be relevant to those stages of the project where no planting will be proposed, such as for the tunnel.
- 11.19 **DCO Requirement 10:** Requirement 10 (Implementation of mitigation planting scheme) is concerned with the implementation of the mitigation planting scheme and defines timescales. Flexibility to deviate from planting timescales under sub-paragraph (1) is proportionate and necessary if an extended timescale is later found to be essential and/or beneficial for a given stage, and only with the agreement of the relevant planning authority.
- 11.20 **DCO Requirement 11:** Requirement 11 (Maintenance of implemented mitigation planting scheme) concerns the period over which planting associated with the mitigation planting scheme is maintained. Planting of damaged or diseased trees are to be replaced by trees of the same size and species, unless otherwise agreed with the relevant planning authority. The flexibility to allow for different replacement sizes and species allows for proportionate flexibility to plant trees which perform better if the original species fails, and only with the agreement of the relevant planning authority.
- 11.21 **DCO Requirement 12:** Requirement 12 (Retention and protection of existing trees and hedgerows) secures the preparation of a Tree and Hedgerow Protection Strategy for each stage, with relevant works not to commence until the approved protection measures are in place.

Flexibility to deviate from an approved THPS is provided at subparagraph (5). This flexibility is necessary and proportionate should a deviation be needed following commencement of a relevant stage of the authorised development, and only with the agreement of the relevant planning authority.

- 11.22 **DCO Requirement 13:** Requirement 13 (Reinstatement schemes) provides for the reinstatement of land. This is subject to Article 26 (temporary use of land by National Grid) and Article 27 (temporary use of land by SP Manweb).
- 11.23 **DCO Requirement 14:** Requirement 14 (Contaminated land and controlled waters) provides that no stage of the authorised development may commence until a written scheme applicable to that stage on ground conditions has been approved by the relevant planning authority and / or other discharging authority as may be relevant.
- 11.24 **DCO Requirement 15:** Requirement 15 (Inspection of temporary watercourses) provides that no stage of the authorised development may commence until a written scheme for the inspection of temporary watercourses applicable to that stage has been approved by the relevant planning authority and / or other discharging authority as may be relevant.
- 11.25 **DCO Requirement 16:** Requirement 16 (Removal of temporary bridges or culverts) provides for the removal of such temporary structures within 12 months (or longer if agreed) of completion of the construction of that stage of the authorised development for which it was required.
- 11.26 **DCO Requirement 17:** Requirement 17 (Highway works) provides that no work to construct any permanent or temporary means of access to a highway shall commence until written details have been submitted and approved by the relevant planning authority.
- 11.27 **DCO Requirement 18:** Requirement 18 (Decommissioning) provides for the decommissioning of the authorised development (excluding substations), with details to be approved by the relevant planning authority at least six months prior to the commencement of any decommissioning works.
- 11.28 **DCO Requirement 19:** Requirement 19 (Operational Noise) provides operational noise limits for the tunnel head house sites.
- 11.29 **Schedule 4 (Discharge of requirements)** sets out two mechanisms – the first applies to any consent, agreement or approval which needs to be obtained under the Requirements set out in Schedule 3, and specifies elements of the procedure to be followed. The latter part clarifies the appeal procedure which applies in respect of any consent,

agreement or approval which needs to be secured pursuant to the Requirements, any document referred to in the Requirements, or elsewhere in the Order.

- 11.30 This schedule is based on schedule 3 of the National Grid (North London Reinforcement Project) Order 2014, Schedule 14 of The Hinkley Point C (Nuclear Generating Station) Order 2013 and Schedule 4 of the National Grid (Hinkley Point C Connection Project) Order 2016.
- 11.31 Schedule 4 has been the subject of discussion with the relevant discharging bodies.
- 11.32 **Schedule 5 (Streets subject to street works)** sets out the streets referred to in article 11 subject to street works.
- 11.33 **Schedule 6 (Streets subject to alteration of layout)** sets out the streets, referred to in article 13, the layouts of which are subject to permanent or temporary alterations.
- 11.34 **Schedule 7 (Streets or Public Rights of Way to be temporarily stopped up)** sets out the streets and public rights of way which are subject to temporary stopping up under article 14.
- 11.35 **Schedule 8 (Access to works)** sets out the locations, referred to in article 15, where access would be taken from the public highway, for construction and/or operation / maintenance purposes.
- 11.36 **Schedule 9 (Modification of compensation and compulsory purchase enactments for creation of new rights)** pursuant to article 23 sets out the modifications to the statutory provisions applicable to compensation and compulsory purchase under the Order where new rights are to be acquired or restrictions are to be imposed.
- 11.37 **Schedule 10 (Land of which only subsoil more than 9 metres beneath the surface may be required)** sets out the land referred to in article 25.
- 11.38 **Schedule 11 (Land of which temporary possession may be taken)** sets out the land referred to in articles 26 and 27 which National Grid and SP Manweb may (respectively) temporarily occupy (albeit noting the wider temporary occupation power in respect of the Order Land) and the purpose for which that temporary occupation may be taken.
- 11.39 **Schedule 12 (Extinguishment of private rights and restrictive covenants relating to apparatus belonging to National Grid or SP Manweb removed from land subject to temporary possession)** sets out these plots where rights in relation to removed apparatus are to be extinguished under article 40.
- 11.40 **Schedule 13 (Traffic regulation)** sets out the streets that are subject to traffic regulation measures further to article 47.

- 11.41 **Schedule 14 (Trees subject to tree preservation orders)** sets out the trees subject to preservation orders further to article 49.
- 11.42 **Schedule 15 (Protective provisions)** sets out the provisions for the protection of statutory undertakers affected by the authorised development.
- 11.43 **Schedule 16 (Public General Legislation)** makes provision applying, modifying and excluding statutory provisions referred to in article 54.
- 11.44 **Schedule 17 (Amendment of local legislation)** lists the local legislation and byelaws National Grid seeks to exclude in relation to the proposed development further to article 55.

**END**