

# Explanatory Memorandum

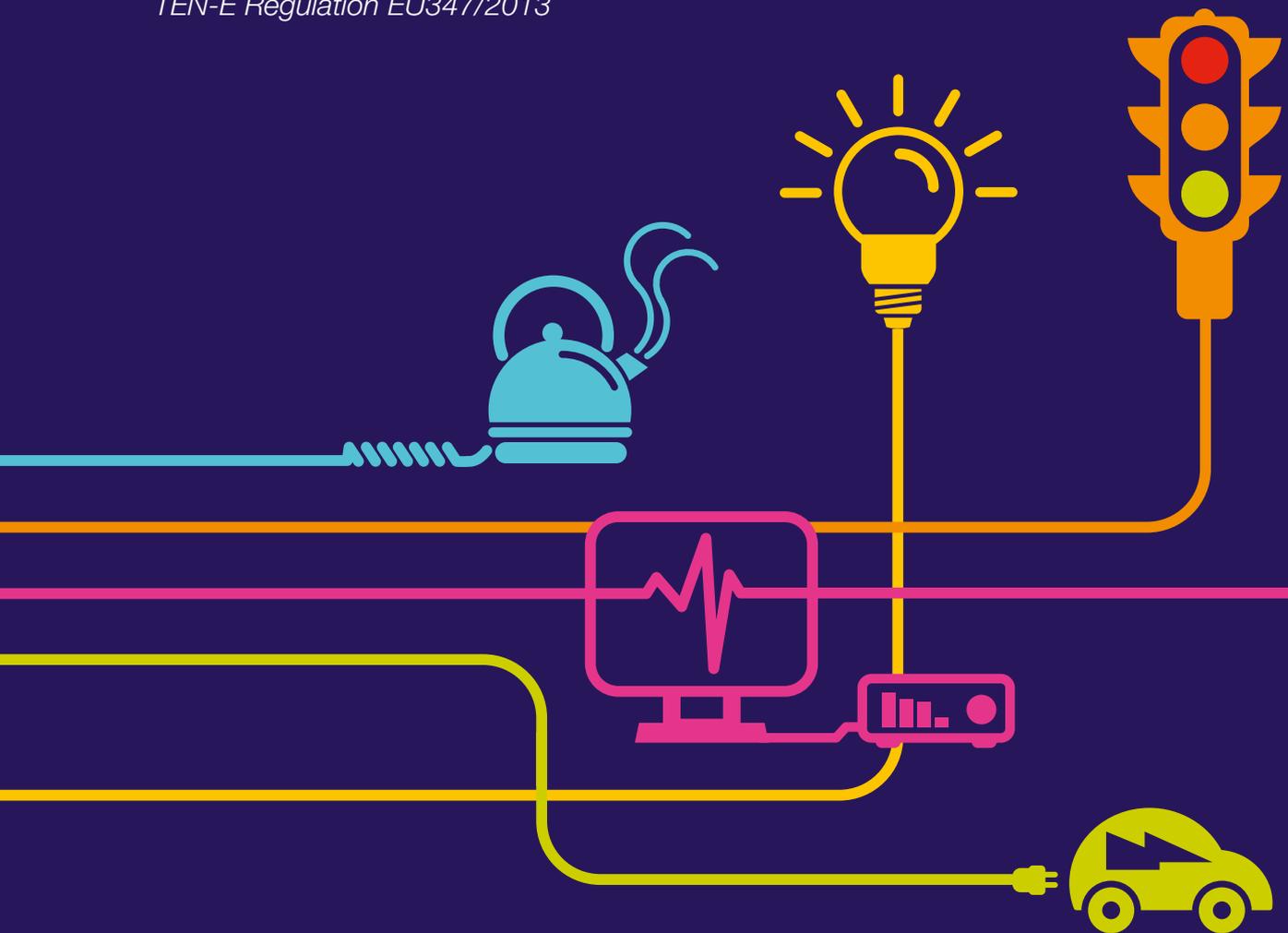
National Grid (Richborough Connection Project) Order

*Regulation (5)(2)(c) of the*

*Infrastructure Planning (Applications: Prescribed Forms and Procedure)*

*Regulations 2009 and*

*TEN-E Regulation EU347/2013*





**The Planning Act 2008**

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

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

**The proposed National Grid (Richborough Connection Project) Development Consent Order**

**Explanatory Memorandum**

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## CONTENTS

1	Introduction	4
2	Purpose of the Order	5
3	Ancillary matters	7
4	Draft Order	7
5	Part 1 – Preliminary	8
6	Part 2 – Principal powers	10
7	Part 3 – Streets	13
8	Part 4 – Supplemental powers	16
9	Part 5 – Powers of Acquisition	18
10	Part 6 – Miscellaneous and general	24
11	Schedules	28

## 1 Introduction

- 1.1 This memorandum explains the purpose and effect of each article of, and Schedules to, the draft National Grid (Richborough Connection Project) Development Consent Order (“the Order”), as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>1</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) unless otherwise stated<sup>2</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 prescribed 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 though it is noted that 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 Where there is a significant departure from the general model provisions, or an article is based on other precedent orders, an explanation of the new provision is provided. In general, the precedents followed for the Order are other development consent orders for electric lines (the National Grid (King’s Lynn B Power Station Connection) Development Consent Order 2013<sup>3</sup>, the National Grid (North London Reinforcement Project) Development Consent Order 2014<sup>4</sup> and the National Grid (Hinkley Point C Connection Project) Order 2016<sup>5</sup> as well as development consent orders and Transport and Works Act Order for other linear schemes, such as railways and tramways.
- 1.5 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.

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

<sup>2</sup> Although the Model Provisions Order 2009 lapsed on the repeal of the enabling power in section 38 of the Planning Act, it continues to provide a helpful guide to drafting and the Planning Inspectorate’s Advice Note 13 requests that developers provide a track-changes draft of the DCO showing any departures from the model provisions.

<sup>3</sup> S.I. 2013/3200

<sup>4</sup> S.I. 2014/1052

<sup>5</sup> S.I. 2016/49

## 2 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 Richborough Connection Project which would authorise works to the national electricity transmission system between Richborough and Canterbury. The proposed development is required to provide sufficient transmission capacity to enable the connection of the new electricity project in the region known as Nemo Link®.
- 2.2 The proposed development consists of the following principal components:
- A new 400kV overhead line between Richborough and Canterbury North Substations (to be known as the PC route). This would be approximately 20km long and would be built using 45 standard lattice pylons and 15 low height lattice pylons (60 pylons in total).
  - A permanent diversion of an existing lower voltage (132kV) overhead line (known as the PY route) to enable the new 400kV overhead line to be constructed above the existing lower voltage overhead line. This would be done by building 6 new pylons, 4 of which are of a different height so the new 400kV overhead line can then be built.
  - Three temporary diversions of another existing lower voltage (132kV) overhead line (known as the PX route). The PX route has to remain in operation (energised) whilst the new 400kV overhead line is being built, so in order to maintain local electricity supplies, three temporary diversions of the existing PX route would be needed where the new 400kV overhead line crosses over it. This would be done by transferring the PX route onto wooden poles so that the new 400kV overhead line can be built.
  - The removal of 20.6km (79 pylons) of existing lower voltage (132kV) overhead line, the PX route (and its temporary diversions) which runs between Richborough 132kV Substation and Canterbury South 132kV Substation.
  - Other works, for example, temporary access roads to reach pylon construction and demolition areas, bridge structures, highway works, construction compounds, protective scaffold structures, pylon work sites and ancillary works.
- 2.3 A more detailed description of the proposed development is provided in Chapter 3 of the Environmental Statement (document reference 5.2) which accompanies the application.
- 2.4 A new 400kV overhead line between Richborough and Canterbury North Substations (to be known as the PC route). This would be approximately 20km long and would be built using 45 standard lattice pylons and 15 low height lattice pylons (60 pylons in total).

- 2.5 A permanent diversion of an existing lower voltage (132kV) overhead line (known as the PY route) to enable the new 400kV overhead line to be constructed above the existing lower voltage overhead line. This would be done by building 6 new pylons, 4 of which are of a different height so the new 400kV overhead line can then be built.
- 2.6 Three temporary diversions of another existing lower voltage (132kV) overhead line (known as the PX route). The PX route has to remain in operation (energised) whilst the new 400kV overhead line is being built, so in order to maintain local electricity supplies, three temporary diversions of the existing PX route would be needed where the new 400kV overhead line crosses over it. This would be done by transferring the PX route onto wooden poles so that the new 400kV overhead line can be built.
- 2.7 The removal of 20.6km (79 pylons) of existing lower voltage (132kV) overhead line, the PX route (and its temporary diversions) which runs between Richborough 132kV Substation and Canterbury South 132kV Substation.
- 2.8 Other works, for example, temporary access roads to reach pylon construction and demolition areas, bridge structures, highway works, construction compounds, protective scaffold structures, pylon work sites and ancillary works.
- 2.9 Schedule 1 to the Order contains a list of numbered works comprising the proposed development.

#### *Associated development*

- 2.10 In connection with the installation of the electric line above ground, the Order specifically authorises ‘associated development’, being development that is associated with the NSIP or any part of it. The Secretary of State may, under the provisions of section 115 of the Planning Act 2008 (the “2008 Act”), grant consent for development that is associated with the NSIP.
- 2.11 Guidance on associated development has been issued by the Secretary of State<sup>6</sup>. This guidance explains that the Secretary of State will decide on a case by case basis whether or not development should be treated as associated development and provides the core principles that will be taken into account. These principles include:

*Associated development should therefore either support the construction or operation of the principal development, or help address its impacts.*

*Associated development should not be an aim in itself but should be subordinate to the principal development.*

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<sup>6</sup> *Planning Act 2008: Guidance on associated development applications for major infrastructure projects* (Department for Communities and Local Government) (April 2013).

- 2.12 The description of the authorised development in Schedule 1 to the Order includes miscellaneous associated development which supports the construction and operation of the principal development and is subordinate to that development, in accordance with the core principles set out in the CLG guidance.
- 2.13 National Grid considers that all elements of the proposed development either constitute part of an NSIP or are “associated development” within the meaning of section 115(2).

### **3 Ancillary matters**

- 3.1 The Order also contains several powers that are ancillary to the authorised development (i.e. provisions not consisting of development).
- 3.2 The main ancillary matter is a power to acquire rights compulsorily or by agreement, in accordance with section 120(4) of the 2008 Act. The Order also contains associated powers including the acquisition of rights necessary to construct and maintain the authorised development. A justification for these is set out in the Statement of Reasons that accompanies the application.
- 3.3 The Order seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. In such cases, sections 117 and 120(5) of the 2008 Act require that the Order be made by Statutory Instrument. The Order is, therefore, drafted in that form.

### **4 Draft Order**

- 4.1 The Order is based on the general model provisions. Reference is also made to the railway model provisions within the Model Provisions Order 2009 given the linear nature of the project. The provisions of the Order are now explained in sequence, giving reasons for any departure from the general model provisions.
- 4.2 The 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 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”.
- 4.3 Previous Orders (for example, the Network Rail (North Doncaster Chord) Order 2012; the Network Rail (Norton Bridge Area Improvements) Order 2014; the National Grid (North London Reinforcement Project) Order 2014; and the National Grid (Hinkley Point C Connection Project) Order 2016) have contained 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 and also a longstop default provision to the effect that, if the relevant third party fails to respond, the consent, agreement or approval 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 rigorously examined, the delivery of the authorised development should not be held up unreasonably, if it has been approved by the Secretary of State. This is particularly so given National Grid's obligation to connect with the Nemo Link interconnector for commercial operation to start in 2019 which will require National Grid to work to a tight construction programme.
- 4.5 The draft Order includes, therefore, at articles 12(5); 13(7); 14(2); 16(9); 18(6) and 39(8) a deemed consenting regime to apply 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.

## **5 Part 1 – Preliminary**

### *Preamble*

- 5.1 The Order, in common with all statutory instruments, is introduced by a preamble.
- 5.2 This preamble includes a reference to the Secretary of State being satisfied that, to the extent that it authorises the compulsory acquisition of a right over land to which section 132 of the 2008 Act applies (Commons, open spaces etc: compulsory acquisition of rights over land) the Order land, when burdened with an Order right, will be no less advantageous than it was before and that the order granting development consent is not subject to special parliamentary procedure.
- 5.3 This follows amendments made to sections 131 and 132 of the 2008 Act by section 24 of the Growth and Infrastructure Act 2013 which requires that fact, and the subsection concerned, to be recorded in the Order. It is incumbent on National Grid to satisfy the Secretary of State that the Order land so burdened with such rights will be no less advantageous than it was before.

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

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

### *Article 2 (Interpretation)*

- 5.5 Article 2(1) defines terms used in the remainder of the Order. The definitions used in the model provisions are amended and supplemented to reflect the particular circumstances of the project and changes to the 2008 Act which have been made since it was originally enacted. A number of definitions are added, including: “the 1981 Act”; “the 2009 Act”; “the access and rights of way and public rights of navigation plans”; “electronic transmission”; “limits of deviation”; “maintain”; and “traffic”. A detailed definition of the “Construction Environmental Management Plan” including its 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.
- 5.6 Other amendments have been made to the definitions used in the 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 a number of local planning authority areas.
- 5.7 “The undertaker” is defined as National Grid Electricity Transmission plc in relation to the authorised development and United Kingdom Power Networks (UK Power Networks) in relation to the UK Power Networks Works. The latter works are also defined in article 2 (“the UK Power Networks Works”) (Works Nos 4A to 6F described in Schedule 1 (authorised development)) and any associated development in connection with those works.
- 5.8 As explained above, the definition of “the undertaker” includes both National Grid and UK Power Networks. In this document the terms ‘National Grid’ and ‘UK Power Networks’ are used. Save where both National Grid and UK Power Networks are mentioned in the same paragraph, a reference to National Grid in this document also applies to UK Power Networks in so much as the provisions of the Order have effect for the benefit of UK Power Networks in respect of the UK Power Networks works (see article 6 Benefit of Order) as well as National Grid in respect of the authorised development.
- 5.9 Article 2(2) of the general model provisions has been amended to clarify references to the imposition of restrictions on the Order land.
- 5.10 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 limits of

deviation. It is commonplace to include such a provision in an Act or instrument authorising linear infrastructure<sup>7</sup>.

- 5.11 Articles 2(4) to (8) 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). 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 Order. Article 2(8) provides a definition of ‘operational use’.

## **6 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 authorised development means the development under sections 14(1)(b) and 16 of the 2008 Act and associated development under section 115(2) of the 2008 Act. The development consent is subject to the requirements set out in Schedule 3.
- 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.
- 6.3 Article 3 grants development consent to National Grid to carry out any of the authorised development. Article 3 grants development consent to UK Power Networks to carry out the works to the local electricity distribution network (the UK Power Networks Works).
- 6.4 Paragraphs (2) and (3) of article 3 reflect section 141 of the 2008 Act, and provide that National Grid and UK Power Networks have authority to keep installed the above-ground electric lines. Paragraph (2) confirms that National Grid’s consent extends only to the construction of the UK Power Networks Works and not the ongoing installation or operation of those works. This authority is provided in lieu of consent which would otherwise be required under s. 37 of the Electricity Act 1989.
- 6.5 Paragraph (4) of article 3 confirms that National Grid may operate and use the electric lines and any other elements of the authorised development (excluding the UK Power Networks Works), as part of the high-voltage electricity transmission system in England and Wales.

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<sup>7</sup> See, for example, section 56(5)(c) of the Crossrail Act 2008. Also, see article 2(3) of the National Grid (North London Reinforcement Project) Order 2014 (S.I. 2014/1052)

- 6.6 Paragraph (5) of article 3 confirms that UK Power Networks may operate and use the elements of the authorised works that comprise the UK Power Networks works as part of the electricity distribution network in England and Wales.
- 6.7 Paragraph (6) of article 3 confirms the limits of deviation within which the works described in Schedule 1 must be carried out. Further commentary on this is provided below in relation to article 5.
- 6.8 Paragraph (7) confirms that the Requirements in Schedule 3 have effect.

*Article 4 (Maintenance of authorised development)*

- 6.9 This article sets out the scope within which National Grid may maintain the authorised development and UK Power Networks the UK Power Networks works. It is identical to the general model provisions article 3. “Maintain” is defined in article 2.

*Article 5 (Limits of deviation)*

- 6.10 Article 5 reflects a provision which is included in the railway model provisions and which is appropriate in the context of linear projects. These limits allow for the lateral deviation of works within the lines shown on the works plan and for the vertical deviation of the linear works, not exceeding 4 metres upwards or to any extent downwards.
- 6.11 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.
- 6.12 The lateral limits of deviation are shown on the works plans and constrains the location of these 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.
- 6.13 The vertical limits of deviation have been set to 4 metres upwards and any amount necessary or convenient downwards. Again, the purpose is to provide a necessary but proportionate degree of flexibility in the construction of the authorised development and to reduce risk. The reference to “...*any extent downwards*...” is taken from the DCO general model provisions and also the TWA model provisions and is common in linear projects. An element of flexibility in downwards deviation is required so that any construction can reflect extant ground conditions when the works are carried out.
- 6.14 A similar approach has been adopted on The National Grid (King’s Lynn B Power Station Connection) Development Consent Order, the National Grid (North London Reinforcement Project) Development Consent Order and the National Grid (Hinkley Point C Connection Project) Order.

*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 2008 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 to be exercised only by National Grid (or UK Power Networks in the case of the UK Power Networks works). The revised article confirms this position.
- 6.17 By this means, UK Power Networks enjoys the benefit of the Order as well as National Grid, so far as the UK Power Networks works are concerned, including the powers to obtain the necessary interests in land and to take possession of land temporarily. This article enables National Grid and UK Power Networks to agree how, and by whom, the UK Power Networks works will be carried out.
- 6.18 This approach also safeguards National Grid's need to be able to carry out the UK Power Networks works itself (if required) as part of the authorised development.
- 6.19 By article 6(2), UK Power Networks may not exercise the development consent for the UK Power Networks works conferred on it without the consent of, and upon such terms as may be agreed by, National Grid.
- 6.20 Articles 6(3) and (4) confirms the position that, if UK Power Networks fails to carry out the UK Power Networks works, National Grid can carry out the UK Power Networks works, on giving notice to UK Power Networks and the Secretary of State, and that UK Power Networks will cease to have the benefit of article 3(1)(b) on the date specified in the notice.
- 6.21 Article 6(5) ensures that, if UK Power Networks does exercise any benefits or rights conferred on it by the Order, it is subject to the same restrictions, liabilities and obligations as would apply if those benefits and rights were exercised by National Grid.
- 6.22 The exceptions specified in article 6(6) have been added to clarify the exceptions where the Order may benefit others, e.g. rights for statutory undertakers and mitigation works.

*Article 7 (Consent to transfer of 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.
- 6.24 Article 7(2) ensures that the Secretary of State must consult the MMO before giving consent to the transfer of the whole or part of the Deemed Marine Licence.
- 6.25 Article 7(4) 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 UK Power Networks.

- 6.26 This article is subject to the provisions of article 6 in relation to any rights or benefits in relation to the UK Power Networks works that are transferred or granted by UK Power Networks.

*Article 8 (Application of the 1990 Act)*

- 6.27 This article applies to specified works which, though temporary in nature, would be in place for a considerable period of time (e.g. temporary office accommodation). 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.

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

- 6.28 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.

## **7 Part 3 – Streets**

*Article 10 (Street works)*

- 7.1 This article allows works to be carried out in or upon streets identified in Schedule 5 within the Order Limits and 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 11 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) a new sub-paragraph (1)(c) has been included to reflect the street works powers available to the undertaker in paragraph 1(b)(iii) of Schedule 4 to the Electricity Act 1989; and

- (c) a new sub-paragraph (3) has been included to make it clear that any powers conferred by article 9 do not prejudice those granted to under the Electricity Act.

7.2 General model provision 8(2) provides that the authority given by paragraph (1) is a “statutory right” for the purposes of the New Roads and Street Works Act 1991. Since a statutory right for the purposes of that Act is defined as including any right under subordinate legislation, this must include as Development Consent Order and so general model provision 8(2) is not used.

7.3 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 11 (Application of 1991 Act)*

7.4 This article departs from the 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 13, 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 a Development Consent Order<sup>8</sup>.

7.5 This prevents 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 12 (Power to alter the layout, etc. of streets)*

7.6 This article would permit 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 to the Order to accommodate the authorised development.

7.7 Paragraph 2 provides a broader power to alter the layout of any street within the Order limits and the layout of any street having a junction with such a street (i.e. where the street is not listed in Schedule 6,) and the person undertaking the work is not the street authority for that street. To exercise this broader power, the consent of the street authority must be obtained.

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<sup>8</sup> See article 10 of the Network Rail (Ipswich Chord) Order 2012 (S.I. 2012/2284); article 4 of the Nottingham Express Transit Order 2009 (S.I. 2009/1300) and article 3 of the London Underground (Victoria Station Upgrade Order 2009 (S.I. 2009/2364).

- 7.8 Article 12(3) provides that any street altered temporarily under this article must be restored to the reasonable satisfaction of the street authority. This article is not included in the general model provisions. The article has precedent in recent linear schemes authorised by the Transport and Works Act 1992<sup>9</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>10</sup> and has been included in other development consent order applications for linear projects<sup>11</sup>.
- 7.9 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.
- 7.10 This provision is necessary to give full effect to the power to carry out the authorised development as is provided for under section 120(5) of the Planning Act 2008.

*Article 13 (Temporary stopping up of streets and public rights of way)*

- 7.11 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 DCO Model Provisions only provide for the permanent stopping up of footpaths). This approach was recently 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.
- 7.12 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 authority (which may impose reasonable conditions) must be obtained.
- 7.13 A new paragraph (2) confers a power on National Grid to use a street and public right of way which has been temporarily stopped up, altered or diverted as a temporary working site. This provision which has precedent in recent orders made under the Transport and Works Act 1992<sup>12</sup>.

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<sup>9</sup> See the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011/1072).

<sup>10</sup> S.I. 2006/1954

<sup>11</sup> See the Network Rail (North Doncaster Chord) Development Consent Order 2012 (S.I. 2012/2635) and the National Grid (North London Reinforcement Project) Order 2014 (S.I. 2014/1052)

<sup>12</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).

- 7.14 Paragraph (4) has been amended to make it clear that National Grid, when stopping up streets or public rights of way, must provide temporary diversion in relation to the streets and public rights of way listed in Part 1 of Schedule 7.
- 7.15 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<sup>13</sup>. 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 14 (Access to works)*

- 7.16 This article allows National Grid to provide or form means of accesses to and from public highways within Order limits.
- 7.17 Such accesses may only be created with the consent of the planning authority after consulting the highway authority. If the authority fails to respond to the application within 28 days (as explained above), it will be deemed to have granted consent. Otherwise, the article follows the general model provision.

*Article 15 (Agreements with street authorities)*

- 7.18 This article allows National Grid and the relevant street authority to enter into agreements about the street works necessitated by the project which would allow the local authority to carry out such works under the terms of that agreement.
- 7.19 This power is separate to any agreements made under section 278 of the Highways Act 1980 which do not relate to powers under the Order but to a local authority devolving its powers (under section 278 of that Act).

## **8 Part 4 – Supplemental powers**

*Article 16 (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.

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<sup>13</sup> See the Network Rail (North Doncaster Chord) Development Consent Order 2012 and National Grid (North London Reinforcement Project) Order 2014 (S.I 2014/1052).

- 8.2 It is too early to say whether such discharges to private watercourses will be needed, 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 consultation.
- 8.3 The article is similar to the general model provision, except:
- (a) paragraph (8) is updated to reflect the repeal of section 85 of the Water Resources Act 1991 (which is referred to in the Model Provisions) and its replacement by the Environmental Permitting (England and Wales) Regulations 2010;
  - (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; and
  - (c) public sewers or drains which belong to the highway authority have been included in the definition of “public sewer or drain” in paragraph (10)(a).

*Article 17 (Protective work to buildings)*

- 8.4 This article sets out the circumstances in which protective works can be carried out to buildings within the Order limits that it is considered might be damaged by the works. Except in an emergency, 14 days’ notice must be given to the owner of the building, 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.
- 8.5 The article is identical to the general model provisions article except that the words ‘first opened for use’ has been replaced with ‘becomes operational’ to better reflect the nature of the authorised development.

*Article 18 (Authority to survey and investigate the land)*

- 8.6 This article confers the power to enter land within the Order limits for the purpose of surveying or investigating it, including a power to make trial holes and carry out ecological or archaeological investigations and to use and leave apparatus 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.
- 8.7 The article is based on the general model provision, although there are various minor drafting changes:

- (a) in paragraphs (1)(b) and (c), 'generality' has been substituted with 'scope';
- (b) in paragraph (1)(b) powers to make boreholes or excavations and the words 'on the land' have been added;
- (c) in paragraph (1)(c) a reference to 'monitoring' has been added;
- (d) in paragraph (1)(d) the words 'boreholes or excavations' have been added to reflect the changes made to paragraph (1)(b);
- (e) in paragraph 3(a), 'before or after' is added to show that the proof of authority does not have to precede entry onto the land;
- (f) paragraph 3(b) has been added to reflect comments made by the National Farmers Union to make clear that notice served under paragraph (3) must specify and provide detail of the purpose for which permission is sought to survey and investigate the land.
- (g) in paragraph 3(c), 'with them' is changed to 'onto the land' and the words 'boreholes or excavations' have been added to reflect the changes made to paragraph (1)(b);
- (h) in paragraph 4(a) the word 'relevant' has been inserted in front of highway authority for clarity; and
- (i) as explained earlier, a provision has been added to provide that consent from the relevant highway or street 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.

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

### *Article 19 (Compulsory acquisition of rights - incorporation of the mineral code)*

- 9.1 This article is identical to the general model provisions (taking the option of incorporating Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981 rather than just Part 2; Part 3 providing 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.

### *Article 20 (Time limit for exercise of authority to acquire rights compulsorily)*

- 9.2 This article gives National Grid five years to issue 'notices to treat' or a 'general vesting declaration' to acquire the rights in 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. This accords with the general model provisions.

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

- 9.3 This article allows National Grid to acquire rights over the Order land, including by creating new rights for the purpose of the authorised development.
- 9.4 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.
- 9.5 As well as providing for the acquisition of rights, the article enables the undertaker 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<sup>14</sup>. The power to impose restrictions is appropriate in the context of the Richborough Connection Project 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.
- 9.6 General model provision paragraph (2) has not been included as similar provision is instead included in article 23 (Extinguishment and suspension of private rights).
- 9.7 Paragraph (3) provides that where National or UK Power Networks needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.
- 9.8 Paragraph (4) and Schedule 10 impose modifications to the compulsory purchase and compensation provisions under general legislation. 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 2008 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.

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<sup>14</sup> See article 20(2) of the Network Rail (Hitchin (Cambridge Junction)) Order 2011.

- 9.9 General model provision paragraph (4) has not been included as equivalent provision has instead been made in article 23 (Extinguishment and suspension of private rights).
- 9.10 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.

*Article 22 (Crown rights)*

- 9.11 Article 22 has been added to reflect the approach to Crown rights taken by the Secretary of State in relation to the National Grid (Hinkley Point C Connection Project) Order 2016.

*Article 23 (Extinguishment and suspension of private rights)*

- 9.12 As outlined above in the commentary to article 22, this article has expanded upon the general model provision so as to apply to private rights generally and not just to rights of way.
- 9.13 It provides for the extinguishment 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) from the date of the acquisition rights. Private rights on land already owned by the undertaker 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. It allows the undertaker to “clear title” on land it already owns.
- 9.14 All private rights over land that is temporarily occupied by the undertaker or UK Power Networks are suspended and unenforceable for the duration of the occupation (save as provided for in article 24 below).
- 9.15 The article makes provision in relation to the payment of compensation. There is a saving for statutory undertakers. Private rights are defined in article 24 (9). This builds on the definition of rights given in article 21(2) of the general model provisions and includes the wider definition used in article 18(3) of the Rookery South (Resource Recovery Facility) Order 2011.

*Article 24 (Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession)*

- 9.16 All private rights over land that is temporarily occupied by National Grid or UK Power Networks are suspended and unenforceable for the duration of the

occupation save for rights in relation to apparatus which is removed from the land and which are extinguished when National Grid or UK Power Networks no longer remains in lawful possession of the land

- 9.17 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) 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.

*Article 25 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)*

- 9.18 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

*Article 26 (Acquisition of subsoil or airspace only)*

- 9.19 This article allows National Grid to acquire land below a certain depth under the ground or above a certain height above it, rather than having to acquire all of the land. The article is similar to the general model provision except that it has been extended to include airspace as well as subsoil. The acquisition of interests in or rights over airspace is particularly relevant in the context of overhead electricity lines. See article 28 of the National Grid (North London Reinforcement Project) Order 2014.

*Article 27 (Rights under or over streets)*

- 9.20 This article, which follows model provision 27, 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.

*Article 28 (Temporary use of land by National Grid)*

- 9.21 This article which applies only to National Grid follows, in part general model provision 28 and allows the land set out in Part 1 of Schedule 11 to be occupied temporarily by National Grid while the works are carried out.
- 9.22 A modification to the model provision has been made to allow National Grid also to take temporary possession of any of the 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. This provision has appeared in Orders made under the Transport and Works Act 1992<sup>15</sup>.

- 9.23 It allows National Grid to occupy land to construct the authorised development without having to 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 consequent amendment to paragraph (3) to refer to the two different categories of land.
- 9.24 Paragraph (1)(d) has been also been added to the model provision to allow specified works to be constructed on the land listed in Part 1 of Schedule 11.
- 9.25 Paragraph (4) provides that National Grid must provide written notice of the date of completion of the work for which possession was taken.
- 9.26 Paragraph (5) provides that before giving up temporary possession of land listed in Part 1 of Schedule 11 National Grid must remove all temporary works and restore the land save for the exceptions listed in sub-paragraphs (a) to (d) 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>16</sup>. The provision would allow National Grid to leave, in place, foundations more than 1.5 metres below adjoining ground level.
- 9.27 Paragraph (6) is similar to paragraph (5) but 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 must acquire the interest on, over or in the land or remove the temporary works.
- 9.28 Paragraph (9) has been amended 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 2008 Act is payable under section 152 of the 2008 Act instead.
- 9.29 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.

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<sup>15</sup> For example, the Nottingham Express Transit System Order 2009 (S.I. 2009/1300) (article 36(1)(a)(ii)).

<sup>16</sup> S.I. 2010/1721

*Article 29 (Temporary use of land by UK Power Networks)*

- 9.30 This article mirrors article 28 (Temporary use of land by National Grid) and provides that UK Power Networks may, in connection with the carrying out of the UK Power Networks works (only) take temporary possession of the Order land specified in Part 2 of Schedule 11.

*Article 30 (Temporary use of land for maintaining authorised development)*

- 9.31 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, and compensation must be paid for any loss or damage.
- 9.32 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)).
- 9.33 The article also has the same change to paragraph (8) as was made to paragraph (9) of article 28 and article 29 of the Order.

*Article 31 (Special category land)*

- 9.34 This article (and the preamble to the order) provides, in accordance with section 132(2) and section 132(3) of the 2008 Act, for the special category land required for the purposes of the Order to be discharged from all rights, trusts and incidents to which it was previously subject, where their continuance would be inconsistent with the exercise of Order rights provided that the Secretary of State is satisfied that any special category land when burdened with order rights will be no less advantageous to any affected persons before the imposition of the order rights on the special category land.
- 9.35 This position is recorded in the preamble to the Order (further to the requirements of section 132(2)(b) of the 2008 Act).

*Article 32 (Statutory undertakers)*

- 9.36 This article allows the undertaker to acquire, within the Order limits, interests and rights from statutory undertakers (i.e. utilities such as electricity and gas companies) to be agreed and then included and to extinguish their rights over land. The article is subject to the protective provisions set out in Schedule 14.
- 9.37 The article is based on the general model provision, with the following changes:
- (a) the article is made subject to the protective provisions schedule;
  - (b) the text in sub-paragraph (a) has amalgamated sub-paragraphs (a) and (c) of the model provisions but has been limited to the acquisition

of interests or rights over land belonging to statutory undertakers (not the land itself) and extended to include a power to impose restrictions over the Order land; and

- (c) the text in sub-paragraph (b) referring to the plans is replaced with a reference to the Order land, meaning that it is not restricted to apparatus which has been specifically shown on the plans and described in the book of reference. It is not practicable to show and describe all such apparatus and so a general power for the extinguishment of rights and removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required. As the land where this power may be exercised is shown on the land plans, and the beneficiaries of such rights are described in the book of reference, the requirements of regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied by this revised wording.

#### *Article 33 (Recovery of costs of new connections)*

- 9.38 This article is almost identical to the general model provisions article and 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 33.
- 9.39 The only change to the model provision is that the word 'paragraph' has been changed to 'article' in paragraph (3) to ensure the definitions apply to the whole article.

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

#### *Article 34 (Deemed licence)*

- 10.1 This article provides for a marine licence (the terms of which are set out in Schedule 9) to have been deemed to be granted for the works specified in that Schedule. The works constitute a 'licensable marine activity' for the purposes of the Marine and Coastal Access Act 2009.
- 10.2 The article is based on articles 37 and 38 of the general model provisions but reflect the fact that the marine licence regime under the 2009 Act has replaced the requirement for consent under section 34 of the Coast Protection Act 1949 and Part 2 of the Food and Environment Protection Act 1985.
- 10.3 Schedule 9 (deemed licence under the 2009 Act) sets out the terms of the draft licence.

#### *Article 35 (Application of landlord and tenant law)*

10.4 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.

*Article 36 (Operational land for the purposes of 1990 Act)*

10.5 This article declares that the development consent granted by the Order shall be treated as specific planning permission for the purposes of determining operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990. The article is identical to the general model provisions article.

*Article 37 (Defence to proceedings in respect of statutory nuisance)*

10.6 Section 158 of the Planning Act 2008 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 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 or cannot reasonably be avoided, or the use of the project and is in accordance with any scheme of monitoring or attenuation of noise agreed with the relevant local authority or cannot reasonably be avoided.

10.7 The article is based on the general model provision except that paragraph (1)(b)(i) has been amended to reflect that a noise measurement and attenuation scheme may be agreed but is not required.

*Article 38 (Temporary closure of, and works in, the River Stour)*

10.8 This article identifies the relevant part of the River Stour that may have to be closed during the construction of the authorised development.

10.9 This article would also enable the closure of the relevant part of the River Stour during the construction of the works. This work is necessary so that works adjacent to, and over, the river Stour can be completed safely.

10.10 This article is not a general model provision but has precedent in Transport and Works Act Orders<sup>17</sup> where the completion of the works also required interference with waterways. A similar article is also included in the National Grid (North London Reinforcement Project) Development Consent Order (article 20).

*Article 39 (Traffic regulation)*

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<sup>17</sup> See the Nottingham Express Transit System Order 2009 (2009.1300)

10.11 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, 2 and 3 of Schedule 12 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>18</sup>. It is necessary for the purpose of the construction of the authorised development.

10.12 As explained earlier, a provision has been added to provide 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 40 (Felling or lopping of trees)*

10.13 This article allows any tree or shrub that is near the authorised development to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the project or endanger anyone using it. Compensation is payable for any loss or damage caused.

10.14 The article is identical to the general model provisions article except that:

- (a) reference to 'passengers' has been deleted from model provision 39(1)(b) as it is not relevant to the development authorised by the Order; and
- (b) Paragraph (4) has been added which provides that development consent granted by the Order is to be treated as planning permission pursuant to Part 3 of the 1990 Act for the purposes of regulation 14 of the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

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

10.15 This article allows the undertaker to fell or lop trees listed in Schedule 13 (Trees subject to tree preservation order). This article follows the model provision with some minor drafting amendments.

*Article 42 (Protection of interests)*

10.16 This article provides that Schedule 14 (protective provisions) has effect.

*Article 43 (Certification of plans etc.)*

10.17 This article requires the undertaker to submit the final versions of the plans for certification to the Secretary of State. The article is based on the general model provision which has been amended to refer to the names of the plans that are part of the application.

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<sup>18</sup> It is identical to 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

#### *Article 44 (Service of notices)*

10.18 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<sup>19</sup>. The provision is necessary because the service of notice provisions under sections 229 and 230 of the 2008 Act would not apply to notices served under a development consent order.

#### *Article 45 (Procedure regarding certain approvals etc.)*

10.19 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.

10.20 It also provides that the procedures set out in Schedule 4 apply to any consent, agreement or refusal which needs to be obtained under the Requirements set out in Schedule 3 and any other consents required under the Order. The article clarifies the procedure which applies in respect of these additional consents.

10.21 Schedule 4 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.

10.22 This article and associated Schedule 4 (Discharge of requirements) reflect the approach taken in the National Grid (North London Reinforcement Project) Order 2014 (article 45 and Schedule 3) and in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 46 and Schedule 4).

10.23 This appeal process is considered proportionate and justified in light of the size and scale of the authorised development proposed by the DCO to ensure the delivery of the authorised development.

#### *Article 46 (Removal of human remains)*

10.24 Article 46 requires the undertaker, before it carries out any development which will or may disturb any remains, to remove those remains.

10.25 The undertaker is required to publish a notice of its intention to remove the remains and any relative or personal representative of any deceased person whose remains are to be removed may make arrangements for the removal of the remains. The undertaker is responsible for the reasonable costs of doing so.

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<sup>19</sup> It is identical to article 35 of the Network Rail (Nuneaton North Chord) Order 2010.

10.26 Article 46 follows general model provision 17.

*Article 47 (Amendment of local legislation)*

10.27 This article is similar in effect to article 6 of the general model provisions and seeks to exclude local legislation and byelaws listed in Schedule 15 further to section 120 (5) of the 2008 Act. There is precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Development Consent Order 2014 and the National Grid (Hinkley Point C Connection Project) Order 2016.

10.28 This article is limited in scope in only seeking to identify legislation of local application, which may prohibit the delivery of this nationally significant infrastructure project. It is, therefore, considered proportionate to exclude such legislation which may serve to impede the delivery of the authorised development.

*Article 48 (No double recovery)*

10.29 This is not a model provision and is based on article 44, model clauses for railway contained in schedule 1 to the Transport and Works (Model Clauses for Railways and Tramways) Order 2006. This article has precedent in numerous Transport and Works Act Orders.

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 that well established principle of equivalence that a claimant is compensated for no more and no less than their loss.

*Article 49 (Arbitration)*

10.31 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.

## **11 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 **Schedule 2 (Plans and drawings)** lists the works plans, land plans, access, rights of way and public rights of navigation plans and other plans submitted with the application and to be certified by the Secretary of State.

- 11.3 **Schedule 3 (Requirements)** contains draft requirements corresponding to conditions which, under section 120(2) of the 2008 Act, could have been imposed of the grant of planning permission for the authorised development had it not fallen within the regime of the 2008 Act. The requirements have a similar purpose to planning conditions.
- 11.4 Requirement 1 (Interpretation) provides for the interpretation of words and phrases used in this Part of the Schedule. Paragraph (2) replicates model requirements 36 (Requirement for written approval) and as they are more akin to an explanation of what is meant by the inclusion of certain terms within the requirements.
- 11.5 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.
- 11.6 Requirement 3 (Design drawings) provides that the authorised development shall be carried out in general accordance with the design drawings within the limits of deviation 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.
- 11.7 Requirement 4 (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 part to be given to the relevant planning authority.
- 11.8 Requirement 5 (Construction Environmental Management Plan) requires all construction works to be carried out in general accordance with the Construction Environmental Management Plan with such a plan to be certified by the Secretary of State in accordance with article 43 of the Order. The Construction Environment Management plan includes the various plans, scheme and strategies listed in requirement 5(2). Sub-paragraphs (1) and (4) provide that the Construction Environment Management Plan and its various plans, scheme and strategies must be implemented as approved unless otherwise agreed with the relevant planning authority. In the case of the Biodiversity Mitigation Strategy, the relevant planning authority must also consult Natural England, where required in accordance with its statutory duty, before agreeing to any change in the implementation of the (as approved) strategy.
- 11.9 Requirement 6 (Approval and implementation of construction mitigation plans) provides for the submission to, and approval by, the relevant planning authority of appropriate plans listed in the requirement with the works to be carried out in general accordance with those approved plans.
- 11.10 Requirement 7 (Construction hours) confirms construction hours during which construction work may be carried out.

- 11.11 Requirement 8 (Mitigation planting) confirms arrangements for necessary mitigation planting, including a planting scheme.
- 11.12 Requirement 9 (Implementation of mitigation planting) is concerned with the implementation of mitigation planting requirements set out in requirement 8.
- 11.13 Requirement 10 (Retention and protection of existing trees and hedgerows) requires the preparation of a Tree and Hedgerow Protection Strategy for each relevant stage to be submitted to and approved by the relevant planning authority with the relevant stage of the authorised development not to commence until the approved protection measures are in place.
- 11.14 Requirement 11 (Bird flight diverters) provides for the fitting and retention of bird flight diverters in specified areas (as agreed with Natural England).
- 11.15 Requirement 12 (Reinstatement schemes) provides for the reinstatement of land subject to the provisions of article 28 and 29.
- 11.16 Requirement 13 (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 following consultation with the Environment Agency.
- 11.17 Requirement 14 (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 following consultation with the Environment Agency and relevant drainage authority.
- 11.18 Requirement 15 (Removal of temporary bridges and 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.
- 11.19 Requirement 16 (Highway works) provides that no work to construct or temporarily alter any new or existing means of access to a highway may commence until written details have been submitted and approved by the highway authority. The requirement also requires the carrying out of road safety audits.
- 11.20 Requirement 17 (Clearance over the tidal River Stour) provides that no part of any 400kV overhead electric line shall be installed or maintained directly above the tidal River Stour at a height of less than 10 metres above the mean high water level of that river.
- 11.21 Requirement 18 (Removal of UK Power Networks works) provides that the existing 132kV lines designated for removal as part of the UK Power Networks works will be removed at the earliest opportunity.

- 11.22 Requirement 19 (Decommissioning) provides that in the event that any part of the authorised development (except for those parts comprised of the dismantling and removal of existing infrastructure) is to be decommissioned, a written scheme of decommissioning must be submitted for approval by the relevant planning authority at least six months prior to the commencement of any decommissioning works. Requirement 19 also provides that the approved scheme must be implemented as approved.
- 11.23 Requirement 20 (Ancient Woodland Easement Management Plan) provides for an operational management plan for ancient woodland to be prepared and agreed by the relevant planning authority in consultation with Natural England and the Woodland Trust.
- 11.24 **Schedule 4 (Discharge of requirements)** applies to any consent, agreement or refusal which needs to be obtained under the Requirements set out in Schedule 3 or under any other provision of the Order. It clarifies the procedure which applies in respect of these additional consents.
- 11.25 This schedule is based on schedule 3 of the National Grid (North London Reinforcement Project) Order 2014 and Schedule 4 of the National Grid (Hinkley Point C Connection Project) Order 2016.
- 11.26 **Schedule 5 (Streets subject to street works)** sets out at the streets referred to in article 10 subject to street works.
- 11.27 **Schedule 6 (Streets subject to temporary alteration of layout)** sets out the streets, referred to in article 12, the layouts of which are subject to permanent or temporary alterations.
- 11.28 **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 13.
- 11.29 **Schedule 8 (Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession)** sets out these plots where rights in relation to removed apparatus are to be extinguished under article 24.
- 11.30 **Schedule 9 (Deemed marine licence)** sets out the terms of the deemed marine licence agreed with the Marine Management Organisation and the Port Authority referred to in article 34.
- 11.31 **Schedule 10 (Modification of compensation and compulsory purchase enactments for creation of new rights)** pursuant to article 21 sets out the modifications to the statutory provisions applicable to compensation and compulsory purchase under the Order where new rights are to be acquired.
- 11.32 **Schedule 11 (Land of which temporary possession may be taken)** sets out the land referred to in articles 28 and 29 which National Grid and UK Power Networks may respectively temporarily occupy and the purpose for which that temporary occupation may be taken.

- 11.33 **Schedule 12 (Traffic regulation)** sets out the streets that are subject to traffic regulation measures further to article 39.
- 11.34 **Schedule 13 (Trees subject to tree preservation orders)** sets out the trees subject to preservation orders further to article 41.
- 11.35 **Schedule 14 (Protective provisions)** sets out the provisions for the protection of statutory undertakers affected by the authorised development. Part 1 provides protection for the electricity, gas, water and sewerage undertakers. Part 2 provides protection for operators of electronic communications code networks. Part 3 provides protection for highways and traffic. Part 4 provides protection of railway interests. Part 5 provides protection for South East Water Limited.
- 11.36 The protective provisions are based on similar protective provisions found in the National Grid (King's Lynn B Power Station Connection) 2013, the National Grid (North London Reinforcement Project) Order 2014 and the National Grid (Hinkley Point C Connection Project) Order 2016.
- 11.37 These are draft provisions and subject to further change.
- 11.38 **Schedule 15 (Amendment of local legislation)** lists the local legislation and byelaws the undertaker seeks to exclude in relation to the proposed development further to article 47.